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COMMERCIAL FISHING INDUSTRY VESSEL SAFETY AND COMPENSATION ACT OF 1987

HEARING

BEFORE THE

NATIONAL OCEAN POLICY STUDY

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 849

TO ESTABLISH QUIDELINES FOR TIMELY COMPENSATION FOR TEMPORARY INJURY INCURRED BY SEAMEN ON FISHING INDUSTRY VESSELS AND TO REQUIRE ADDITIONAL SAFETY REGULATIONS FOR FISHING INDUSTRY VESSELS

DECEMBER 7, 1987

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COMMERCIAL FISHING INDUSTRY VESSEL SAFETY AND COMPENSATION ACT OF 198

MONDAY, DECEMBER 7, 1987

U.S. SENATE,
NATIONAL OCEAN POLICY STUDY,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Wakefield, RI.

The committee met, pursuant to notice, at 10:10 a.m., the Washington County Government Center, Senator John H. Chafee,presiding.

Staff members assigned to this hearing: Mike Nussman, professional staff member; and Bob Eisenbud, minority professional staff member.

OPENING STATEMENT BY SENATOR CHAFEE

Senator CHAFEE. I want to welcome everybody here. This is an official field hearing of the United States Senate Committee on Commerce, Science, and Transportation. I would like to thank Senator Ernest Hollings who is Chairman of the Commerce Committee and Senator John Danforth from Missouri, the ranking member of the Committee, for their active interest in the issue of fishing vessel safety and compensation, and for scheduling this hearing.

Before I begin, I would also like to express my appreciation to the witnesses who have agreed to testify here today. I particularly want to note that Mrs. Peggy Barry, who made great effort to attend and was planning to come by train, apparently there's been a train accident and the train was cancelled. So her testimony will be accepted, and she will not be here today. She has been untiring in her efforts to focus national attention on this important issue, and we'll hear from Mr. Joe Nall, one of the five members of the National Transportation Safety Board.

Today we will hear testimony on the need to establish minimum safety standards for fishing vessels. We'll also look at the current system for compensating injured seamen, with the goal of replacing it with one that is efficient and equitable for both crew members and fishing vessel owners.

Each of the witnesses has received a copy of the legislation which I, together with Senators Kerry of Massachusetts and Senator Adams of Washington, introduced in the Senate last March. Senator Kennedy from Massachusetts has also recently joined us as a cosponsor.

This legislation seeks to address the dual problems of escalating insurance rates in the commercial fishing industry and the safety aboard fishing vessels. These problems are of particular concern to Rhode Island fishermen and their families, and to the thousands of Americans who earn their living in the fishing industry.

Now, the need for minimum safety standards on fishing vessels is never more urgently felt than in the aftermath of a tragedy. Some of you here today personally knew the captain and crew of the Newport lobster boat Reliance which was recently lost off the coast of Nantucket. Anyone can read the newspaper accounts of how the wife of the boat's skipper, Mrs. Christopher Dennis, gave birth to a son a few days after the boat was reported missing, and anybody who reads or knows of it certainly has a deep feeling of remorse. My heart goes out to the family and friends of the crew.

Yet it's not enough to simply accept this loss as an inherent risk in a dangerous occupation. We've got to do all we can to ensure that every precaution is taken to minimize the risk and reduce the number of needless vessel sinkings and the resultant loss in life.

In the case of the Reliance it is possible, from some reports probable, that the owner/captain and the crew did all that was humanly possible to prevent such a disaster. Until a final report and investigation are concluded, it would be premature to venture a guess. Yet I'm convinced that in a large number of fishing vessel accidents, loss of life is very preventable if some basic minimum safety standards are adhered to.

We're going to hear testimony today from a woman who lost a loved one in a fishing accident that could have and should have been prevented. We'll also hear testimony from the National Transportation Safety Board Representative Mr. Nall, and the Board has recently issued a report recommending the adoption of tough minimum safety standards for fishing vessels.

Now, the argument for adoption of these standards is compelling: Commercial fishing is the most dangerous occupation in the United States. According to U. S. Coast Guard figures, an average of 250 fishing boats sink each year. That is an appalling statistic. That's—that's one every day and a half, two every three days, of fishing boats that are lost each year. The death rate for fishermen is seven times the national average for all industry groups and twice that as mining which is the next most hazardous occupation.

Because fishing is so inherently dangerous, it comes as no surprise that our commercial fishing industry has been caught up in the general insurance liability crisis.

The cost of protection and indemnity insurance for the fishing industry has soared in recent years, and often it is not available at any price. As insurance becomes unaffordable, many fishing vessel owners are either going without insurance or are going out of business.

The causes of the marine insurance crisis are complex and cannot be soley attributed to exorbitant jury awards. Lax safety standards, inadequate care of the injured or disabled seamen, poor vessel design and fishery management regulations have all aggravated the problem.

S. 849 is the first step toward a comprehensive solution to these problems. It seeks to contain or even roll back soaring insurance premiums by replacing the current inefficient system of litigation for temporary injuries with a system similar to worker's compensation, and by requiring enhanced safety on fishing boats.

I think we all know the commercial fishing industry faces a number of challenges today such as declining stocks and increased foreign competition. The additional problem of escalating insurance rates poses a serious threat to the industry's future. I trust we'll hear insightful testimony today on how we can take a positive step toward making fishing a safer and more prosperous occupation.

[The bill follows:]

100TH CONGRESS
1ST SESSION

S. 849

To establish guidelines for timely compensation for temporary injury incurred by seamen on fishing industry vessels and to require additional safety regulations for fishing industry vessels.

IN THE SENATE OF THE UNITED STATES

MARCH 26 (legislative day, MARCH 24), 1987

Mr. CHAFEE (for himself and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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A BILL

To establish guidelines for timely compensation for temporary injury incurred by seamen on fishing industry vessels and to require additional safety regulations for fishing industry vessels.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Commercial Fishing Industry Vessel Safety and Compensation Act of 1987".

TITLE I—COMPENSATION FOR TEMPORARY INJURY ON FISHING INDUSTRY VESSELS

SEC. 101. COMPENSATION FOR TEMPORARY PERSONAL INJURY.

The Act of March 4, 1915 (chapter 153; 38 Stat. 1164) is amended by adding at the end the following:

"SEC. 21. (a) In this section—

"(1) 'fishing vessel', 'fish processing vessel', and 'fish tender vessel' have the same meanings given those terms in section 2101 of title 46, United States Code.

"(2) an illness, disability, or injury shall be considered temporary if, after cure, the seaman—

"(A) can return to the seaman's previous (or equivalent) employment;

"(B) does not require further medical care with respect to the illness, disability, or injury;

"(C) does not have a substantial loss of sight, voice, or hearing; and

"(D) has not lost an appendage or suffered permanent disfigurement.

"(b) A civil action (including an action for contribution or indemnification) may not be brought under any law of the United States against the employer of a seaman, a vessel owner, or a vessel for loss suffered as the result of a temporary illness, disability, or injury suffered by a seaman during the course of the seaman's employment to a fishing, fish processing, or fish tender vessel if the employer or vessel owner makes payment for, or otherwise provides—

"(1) cure for the ill, disabled, or injured seaman; and

"(2) maintenance during the period of illness, disability or injury in an amount equal to—

"(A) for each day that vessel is on a voyage, the greater of—

"(i) 80 percent of the wage or share the seaman would have received for that day if the seaman had been employed on the vessel for that voyage; or

"(ii) $30; and

"(B) for each day that vessel is not on a voyage, $30.

"(c) The Secretary of Transportation shall annually review the dollar figure in subparagraphs (A)(ii) and (B) of subsection (b)(2). The Secretary may periodically increase or decrease that figure, but not by more than the percentage increase or decrease in the Consumer Price Index for the period considered.

"(d) Subsection (b) shall not apply if—

"(1) the temporary illness, disability, or injury was caused by the gross negligence or willful misconduct of the owner or employer, as the case may be;

"(2) the temporary illness, disability, or injury was primarily caused by a violation of chapter 45 of title 46, United States Code, that was within the knowledge of the owner or employer, as the case may be; or

"(3) payment or provision of maintenance and cure is not made in the manner described in subsection (b).".

SEC. 102. STATUTE OF LIMITATIONS.

The first section of the Act entitled "An Act to provide a uniform three-year statute of limitations in actions to recover damages for personal injury or death, arising out of a maritime tort, and for other purposes" (46 App. U.S.C. 763a) is amended by striking "That," and inserting "That (a)" and by adding at the end the following:

"(b) A civil action against the employer of a seaman or the owner of a fishing, fishing processing, or fish tender vessel for recovery of damages for illness, injury, disability, or death suffered during the course of the seaman's employment to a fishing, fish processing, or fish tender vessel may not be maintained unless started within 2 years from the date the cause of action accrued.".

TITLE II—COMMERCIAL FISHING INDUSTRY VESSEL SAFETY

SEC. 201. FISHING INDUSTRY VESSEL SAFETY REQUIREMENTS.

(a) Chapter 45 of title 46, United States Code, is amended to read as follows:

"CHAPTER 45—COMMERCIAL FISHING INDUSTRY VESSELS

"Sec.
"4501. Application.
"4502. Safety standards.
"4503. Equivalency.
"4504. Prohibited acts.
"4505. Termination of unsafe operations.
"4506. Exemptions.
"4507. Penalties.
"4508. Commercial Fishing Industry Vessel Advisory Committee.

"§ 4501. Application

"(a) This chapter applies to a fishing, fish processing, and fish tender vessel.

"(b) This chapter does not apply to the carriage of bulk dangerous cargoes regulated under chapter 37 of this title.

"§ 4502. Safety standards

"(a) A fishing, fish processing, and fish tender vessel must—

"(1) if propelled by machinery, be provided with fire extinguishers, capable of promptly and effectively extinguishing a combustible or flammable liquid fuel, that shall be kept in a condition for immediate and effective use and so placed as to be readily accessible;

"(2) carry at least one readily accessible life preserver or other lifesaving device for each individual on board;

"(3) have the carburetors of each engine on board the vessel (except an outboard engine) using gasoline as a fuel, equipped with an efficient flame arrestor, backfire trap, or other similar device;

"(4) if using a volatile liquid as fuel, be provided with the means for properly and efficiently ventilating enclosed spaces, including engine and fuel tank compartments, so as to remove any explosive or flammable gases; and

"(5) be provided with visual distress signals.

"(b) In addition to the requirements of subsection (a) of this section, the Secretary shall prescribe regulations for a documented fishing, fish processing, or fish tender vessel operating beyond the Boundary Line, for the installation, maintenance, and use of—

"(1) at least one readily accessible emergency position indicating beacon, or similar electronic position indicating device;

"(2) lifeboats or liferafts sufficient to accommodate all individuals on board;

"(3) at least one readily accessible exposure suit for each individual on board a vessel operating on the waters described in section 3102 of this title;

"(4) radio communications equipment sufficient to effectively communicate with land-based search and rescue facilities; and

"(5) other equipment required to minimize the risk of injury to crew during vessel operations, if the Secretary determines that a risk of serious injury exists that can be eliminated or mitigated by that equipment.

"(c) For an uninspected fish processing vessel entered into service after December 31, 1987, and having more than sixteen individuals on board primarily employed in the preparation of fish or fish products, the Secretary shall prescribe additional regulations for—

"(1) navigation equipment, including radars, fathometers, compasses, radar reflectors, lights, sound-producing devices, nautical charts, and anchors;

"(2) life saving equipment, including life preservers, exposure suits, lifeboats or liferafts, emergency position indicating radio beacons, signaling devices, bilge pumps, bilge alarms, life rails and grab rails, and medicine chests;

"(3) fire protection and firefighting equipment, including fire alarms, portable and semiportable fire extinguishing equipment, and flame arrestors;

"(4) the use and installation of insulation material;

"(5) storage methods for flammable or combustible material; and

"(6) fuel, ventilation, and electrical systems.

"(d)(1) In addition to the other requirements of this section, the Secretary shall prescribe regulations for the operating stability of a documented fishing, fish processing, or fish tender vessel—

"(A) the keel for which was laid after December 31, 1988; or

"(B) whose physical characteristics are substantially altered after December 31, 1988, in a manner affecting the vessel's operating stability.

"(2) The Secretary may accept, as evidence of compliance by a vessel with this subsection, a certification of compliance issued by the person providing insurance for the vessel.

"(e) In prescribing regulations under this section, the Secretary—

"(1) shall consider the specialized nature and economics of the type of vessel operations and the character, design, and construction of the type of vessel;

"(2) shall consult with representatives of the private sector having experience in the operation of vessels to which this chapter applies to ensure the practicability of these regulations; and

"(3) may not require the alteration of a vessel or associated equipment or of the construction of a vessel or manufacture of a particular item of equipment that was begun before the effective date of the regulation.

"§ 4503. Equivalency

"An uninspected fish processing vessel entered into service after December 31, 1987, and having more than sixteen individuals on board primarily employed in the preparation of fish or fish products—

"(1) is deemed to comply with the requirements of this chapter if it has an unexpired certificate of inspection issued by a foreign country that is a party to an International Convention for Safety of Life at Sea to which the United States Government is a party, and

"(2) may not be required by the Secretary to alter or replace the equipment or structural requirements required under this chapter.

"§ 4504. Prohibited acts

"A person may not operate a vessel in violation of this chapter or a regulation prescribed under this chapter.

"§ 4505. Termination of unsafe operations

"If an official charged with the enforcement of this chapter observes a fishing, fish processing, or fish tender vessel being operated in an unsafe condition and, in the judgment of that official, the operation creates an especially hazardous condition, the official may direct the operator of the vessel to take immediate and reasonable steps necessary for the safety of individuals on board the vessel, including directing the operator to return to a mooring and to remain there until the situation creating the hazard is corrected or ended.

"§ 4506. Exemptions

"(a) The Secretary may exempt a vessel from any part of this chapter when, under regulations (including regulations on special operating conditions) prescribed by the Secretary, the Secretary finds that—

(1) good cause exists for granting an exemption; and

"(2) the safety of the vessel and those on board will not be adversely affected.

"(b) A fishing, fish processing, or fish tender vessel is exempt from the provisions of section 4502(b)(2) if it—

"(1) is less than 36 feet in length; and

"(2) is not operating on the high seas.

"§ 4507. Penalties

"(a) If a vessel to which this chapter applies is operated in violation of this chapter or a regulation prescribed under this chapter, the owner, charterer, managing operator, agent, master, and individual in charge are each liable to the United States Government for a civil penalty of not more than $5,000. The vessel also is liable in rem for the penalty.

"(b) A person willfully violating this chapter or a regulation prescribed under this chapter shall be fined not more than $5,000, imprisoned for not more than one year, or both.

"§ 4508. Commercial Fishing Industry Vessel Advisory Committee

"(a) The Secretary shall establish a Commercial Fishing Industry Vessel Advisory Committee. The Committee—

"(1) may advise, consult with, report to, and make recommendations to the Secretary on matters relating to the safe operation of fishing, fish processing, and fish tender vessels, including navigation safety, safety equipment and procedures, marine insurance, vessel design, construction, maintenance and operation, and personnel qualifications and training;

"(2) may review proposed regulations under this chapter;

"(3) may make available to Congress any information, advice, and recommendations that the Committee is authorized to give to the Secretary;

"(4) shall meet at the call of the Secretary, but not less than once during each calendar year.

"(b)(1) The Committee shall consist of seventeen members with particular expertise, knowledge, and experience regarding the commercial fishing industry as follows:

"(A) ten members from the commercial fishing industry who—

"(i) reflect a regional and representational balance; and

"(ii) have experience in the operation of vessels to which this chapter applies or as a crew member or processing line worker on a fish processing vessel;

"(B) three members from the general public, including, whenever possible, an independent expert or consultant in maritime safety and a member of a national organization composed of fishing, fish processing, or fish tender vessel and marine insurance interests;

"(C) one member from each of the following—

"(i) naval architects or marine surveyors;

"(ii) manufacturers of fishing, fish processing, or fish tender vessel equipment;

"(iii) education or training professionals related to fishing, fish processing, or fish tender vessel safety or personnel qualifications; and

"(iv) underwriters engaged in insuring fishing, fish processing, or fish tender vessels.

"(2) At least once a year, the Secretary shall publish a notice in the Federal Register and in newspapers of general circulation in coastal areas soliciting nominations for membership on the Committee, and, after timely notice is published, appoint the members of the Committee. A member may be appointed to any number of terms.

"(3)(A) The term of a member is three years.

"(B) If a vacancy occurs in the membership of the Committee, the Secretary shall appoint a member to fill the remainder of the vacated term.

"(4) The Committee shall elect one of its members as the Chairman and one of its members as the Vice Chairman. The Vice Chairman shall act as Chairman in the absence or incapacity of, or in the event of a vacancy in the office of, the Chairman.

"(5) The Secretary shall, and any other interested agency may, designate a representative to participate as an observer with the Committee. These representatives shall, as appropriate, report to and advise the Committee on matters relating to fishing, fish processing, or fish tender vessels under the jurisdiction of their respective agencies. The Secretary's designated representative shall act as executive secretary for the Committee and perform the duties set forth in section 10(c) of the Federal Advisory Committee Act (5 App. U.S.C.).

"(c)(1) The Secretary shall, whenever practicable, consult with the Committee before taking any significant action relating to the safe operation of fishing, fish processing, or fish tender vessels.

"(2) The Secretary shall consider the information, advice, and recommendations of the Committee in consulting with other agencies and the public or in formulating policy regarding the safe operation of fishing, fish processing, or fish tender vessels.

"(d)(1) Except an officer or employee of the United States or a member of the Armed Forces, a member of the Committee, when attending meetings of the Committee or when otherwise engaged in the business of the Committee, is entitled to receive—

"(A) compensation at a rate fixed by the Secretary, not exceeding the daily equivalent of the current rate of basic pay in effect for GS–18 of the General Schedule under section 5332 of title 5 including travel time; and

"(B) travel or transportation expenses under section 5703 of title 5.

"(2) Payments under this section do not render a member of the Committee an officer or employee of the United States or a member of the Armed Forces for any purpose.

"(3) A member of the Committee who is an officer or employee of the United States or a member of the Armed Forces may not receive additional pay on account of the member's service on the Committee.

"(4) The provisions of this section relating to an officer or employee of the United States or a member of the Armed Forces do not apply to a member of a reserve component of the Armed Forces unless that member is in an active status.

"(e)(1) The Federal Advisory Committee Act (5 U.S.C. App.) applies to the Committee, except that the Committee terminates on September 30, 1992.

"(2) Two years prior to the termination date in this section, the Committee shall submit to Congress its recommendation whether the Committee should be renewed and continued beyond the termination date.".

(b) Of the members first appointed to the Commercial Fishing Industry Advisory Committee under section 4508 of title 46, United States Code—

(1) one-third of the members shall serve a term of one year and one-third of the members shall serve a term of two years, to be determined by lot at the first meeting of the Committee; and

(2) terms may be adjusted to coincide with the Government's fiscal year.

(c) Subsection (e) of section 4102 of title 46, United States Code, is repealed.

SEC. 202. ACCIDENT DATA STATISTICS.

Chapter 61 of title 46, United States Code, is amended by adding at the end the following new section:

"§ 6104. Commercial fishing industry vessel casualty statistics

"(a) The Secretary shall compile statistics concerning marine casualties from data compiled from insurers of fishing, fish processing, fish tender vessels.

"(b) A person underwriting primary insurance for fishing, fish processing or fish tender vessels shall submit periodically to the Secretary data concerning marine casualties that is required by regulations prescribed by the Secretary.

"(c) After consulting with the insurance industry, the Secretary shall prescribe regulations under this section to gather a statistical base for analyzing vessel risks.".

(b) The analysis for chapter 61 of title 46, United States Code, is amended by adding at the end the following:

"6104. Commercial fishing industry vessel casualty statistics.".

(c) Section 6103 of title 46, United States Code, is amended as follows:

(1) before "An" insert "(a)"; and

(2) add the following new subsection:

"(b) A person violating section 6104 of this title or a regulation prescribed under that section is liable to the Government for a civil penalty of not more than $5,000.".

○

Senator Chafee. So the first witness—we have a total of five witnesses today. I understand now with Mrs. Barry—I understand Mr. Peter Sullivan won't be here ; is that correct? Okay.

So we have five witnesses and we'll have a panel of the first two, Mr. Dennis Nixon, Professor of Geography and Marine Affairs. Dennis Nixon, we'll hear from you and Mr. Greg Switlik. So why don't you both come on up to the table. Is this better or worse? Okay. Why don't we start with Professor Nixon. Go to it. Now, if anybody has any testimony, we'll put it in the record and your full testimony will be put in the record but try to summarize it in five minutes apiece if you can. We won't keep you exactly to five but try to stay there. Okay, Dr. Nixon, go to it.

STATEMENT OF DR. DENNIS NIXON, PROFESSOR OF MARINE AFFAIRS

Dr. Nixon. Thank you very much, Senator. Senator, this is the sixth time over the past three years I've had the opportunity to speak before committees of the Senate and the House. I am deeply committed to the twin goals that you mentioned in your introductory statement of helping to provide an environment in which fishing can be conducted more safely and also to create a system which more fairly responds to the needs of the fisherman who has been injured and wants to return to his occupation.

Congress' most recent involvement with this issue began in 1984 with a hearing in Boston conducted by Representative, now Senator Breaux and Representative Studds. In 1985 your committee held hearings in March and October during which I was asked to develop a methodology to recommend some alternative method to compensate injured fishermen. I completed that study in March of 1986, and later that year an earlier version of this bill was offered for a vote in the House of Representatives. The day it was defeated in 1986 was the most disillusioning day of my life. I had never seen the work of a lobbying group that effective.

The American Trial Lawyers Association sent 40 men to the Hill with PAC contributions to block the passage of that bill, and they were successful. I'm not sure without election reform whether or not we can ever get this bill through with opposition like that, but I certainly hope we have the courage within the House and Senate to see this bill passed despite the objection of the ALTA. In April of this year I began working with House and Senate staff once again to refine the bill, to make sure some of the objections were handled, and we ended up with the drafts that are now present in the House and Senate.

I am excited and thrilled that we are close today towards passage of the bill, both in the House and Senate. Reform in both safety and liability is long overdue. Equipment requirements that are mentioned by the NTSB in their report are already met and exceeded by groups like The Point Club. Jim McCauley, president of The Point Club, will testify that they have developed written requirements that go far beyond what are discussed in this legislation.

At page 53 of the NTSB study, the author reports that if the rest of the country were adopting regulations like The Point Club has adopted for itself, we wouldn't have a fishing vessel safety problem.

However, as Mrs. Barry will point out in her testimony, not all have gotten the safety message, and with the guidance of the advisory committee which you added to this bill, I think we will be able to develop regulations to provide a minimum floor of safety standards for the entire fishing industry around the nation.

On the liability compensation side which I have been most heavily involved, a series of attempts to change the method for compensating injured fishermen have been discussed since 1957. The landmark study in 1957 stated that the method for compensating injured fishermen "disregards completely the financial, economic and operational characteristics of the industry. Furthermore, the system in itself is unjust because it is wasteful and slow and it fosters misunderstanding and bitterness between employer and employees. Moreover, it encourages the use of dishonest methods by both parties because Court awards are often not in proportion to the employee's injury or need." That effort did not result in legislation. On later study in the mid-1970s did result in legislation which never got out of committee.

The insurance crisis that we have seen across the board in liability insurance has hit the fishing industry most hard. This particular proposal will in fact address those rates and the problem that the U. S. fishing industry is struggling against, world-wide competitiveness. It will provide a much fairer environment for the industry to compete with other nations. It will provide a much greater chance for an individual fisherman to receive a fair recovery for his injuries.

The method in this bill is supported by research I've been conducting for the past five years. I have flown to every region in the country with substantial fishing fleets. I've spoken to fishermen vessel owners, insurance companies. All have said this is the direction they want to go. It is supported by organized fishing groups around the nation. In testimony that has been taken by your committee, by the House in 1985, by the House in 1986, in the report that I did for the Congress in 1986, every one of these volumes says the fishing industry supports this effort that you are taking. The only organized opposition today is the American Trial Lawyers Association, and I certainly hope that this time we have the strength to overcome their opposition and pass a bill which will be good for the fishing industry. I'm on record so many times that I think I will conclude my statement at this point and answer any questions you might have.

Senator Chafee. Okay. I'm going to wait until we hear from Mr. Switlik, and then we'll ask you some questions.

Okay. Mr. Switlik, glad you're here. Go to it.

STATEMENT OF GREG SWITLIK, PRESIDENT OF U.S. MARINE SAFETY ASSOCIATION

Mr. Switlik. Thank you. I am a manufacturer of life rafts and other related safety equipment, but I'm here as the president of the United States Marine Safety Association. I have submitted written testimony so I'll make a few brief comments and then if you have some questions. The United States Marine Safety Association is composed of manufacturers of marine safety equipment, safety training professionals, service people and retail/wholesale distributors of safety equipment.

We are concerned when we hear comments that come out in the past testimony before the Congress that safety equipment cannot be placed on certain vessels because of the size of the vessels. We are here to let you know that our industry can be responsive to whatever the safety needs are of the fishing industry. We feel it's unfortunate that safety equipment is referred to as being boat equipment. We are a life-savings specialist. We don't save boats; we save people's lives when all else is lost. We are also not compensation experts, so I think I'll refrain from commenting on the compensation.

I have done some checking up since this past week on some of the costs, some of the costs of safety equipment, so if you have any questions about the affordability and reasonableness of the equipment, I'd be glad to answer those.

I've also brought along a few samples here. I do have a survival suit. I have an EPIRB and I have what we have referred to in the industry as a flotation platform. It is not a life raft, but it is similar to a Point apparatus, although being inflatable, survivors can get up and out of the water. We feel that devices like this are important to the smaller vessel and the inshore fisherman. If nothing else, if the requirements are not mandated for the boat, we would hope that Congress would see in this legislation that there is a problem with nonstandardized safety and survival equipment, and we hope that whatever impact Congress can have on the U. S. Coast Guard would ask the Coast Guard to regulate our industry when it comes to smaller vessels. As it is now, the Coast Guard only regulates equipment that goes on large vessels and international——

Senator Chafee. What's that size, 200 feet is it?

Mr. Switlik. Yes, approximately 200 feet.

Senator Chafee. It's based on tonnage, isn't it?

Mr. Switlik. Yes.

Senator Chafee. What's the tonnage?

Mr. Switlik. 300 tons.

Senator Chafee. You mean below 300 tons they're not regulated?

Mr. SWITLIK. There are some regulations, but they are minimum regulations. There are no regulations for life rafts for smaller vessels or flotation platforms of smaller vessels. We feel there need to be regulations. The standard life raft that goes on a passenger liner or tanker or offshore oil rig is probably inappropriate to most vessels operating within 200 miles of shore or under 45 feet in length.

[The statement follows:]

STATEMENT OF THE UNITED STATES MARINE SAFETY ASSOCIATION

The United States Marine Safety Association (USMSA) is an association composed of manufacturers, service facilities, and retail/wholesale suppliers of marine lifesaving equipment, marine safety professionals. The purpose of USMSA is to promote the development and implementation of the highest possible U.S. performance, manufacturing, maintenance, service and training standards for all lifesaving, survival and emergency rescue equipment required and/or used on all U.S. vessels.

USMSA supports S-849. Specifically USMSA supports Title I of S-849 relating to the compensation of fishermen temporarily injured on fishing industry vessels. As manufactures we recognize the benefits of, and have long worked with workman's compensation programs. Those working in the fishing industry deserve a similar compensation program. Title I of S-849 establishes for fisherman a compensation program for temporary injury similar to that currently provided to shore based workers. We applaud the committee efforts, and urge inclusion of these provisions in a compromise bill.

USMA fully supports the additional equipment requirements set forth in S-849. Items such as visual distress signals, EPRIBSs, liferafts, immersion suits, and communications equipment should be standard required equipment on all U.S. fishing vessels. While we realize that many U.S. fishing vessels are so equipped, we also know, as the recent editorial in the National Fisherman (July 1987) reveals, that many are not equipped with this basic equipment. There is, today, no requirement that this equipment be carried; therefore, no minimum manufacturing or testing standards are applicable to any equipment voluntarily carried aboard these vessles, nor is there any requirement for the proper installations, and most important the regular maintenance of this equipment. As manufacturers we are concerned that while the owner of a fishing vessel may purchase what he believes is a quality lifesaving product, unless that product undergoes the vigorous design and testing program conducted by the U.S. Coast Guard he may in fact be purchasing an inferior product. Maintenance, particularly as it effects the performance of inflatable life rafts is a great concern of both manufacturers and safety professionals. While many fishing vessels carry inflatable liferafts, there is, at present, no requirement that these rafts be serviced annually, as recommended by the manufacturers, or that they be serviced by a facility authorized, trained and supplied with spare parts by the manufacturer. If a liferaft is serviced by an unauthorized service facility the manufacturer loses control over the quality of his product and can no longer be confident that it will perform as designed.

Lifesaving equipment manufacturers want to provide products that - with proper installation, servicing and training - will save lives, but without a requirement that this equipment be properly serviced it is difficult to insure that their equipment will perform as advertised.

It is suggested that there is no need for federal legislation to require this additional lifesaving equipment, that the industry can be persuaded to voluntarily provide, properly install and maintain this equipment. We suggest that there is little evidence that this is the case, and furthermore we believe there is a basic federal responsibility to insure that this equipment is provided. It is suggested in the National Fisherman editorial that a crewman can provide his own immersion suit, or "switch to another boat". What about a quality liferaft that is properly installed and serviced, or an EPIRB with an up to date battery? Should a crewman provide these also? We think not. Crewman - fisherman - should not have to worry about these items any more than a passenger on a liner or ferry should worry about whether there are adequate life jackets. Those who go to sea to fish should only worry about whether they can do an already difficult job - catching fish.

USMSA, also would support legislation authorizing the Secretary (ie. the U.S. Coast Guard) to develop additional lifesaving and injury preventing regulations as the need is demonstrated and/or technology advances. This provision provides necessary flexibility and is directed toward future need rather than just dealing with present technology. As small businessmen who are required by Federal law and regulation to provide a safe work place, and who also benefit from a workman's compensation program we understand the need for universal work place safety requirements.

USMSA strongly supports legislation requiring training of fishing vessel crewmen in vessel safety and emergency procedures. Training in the use of life saving equipment is as important if not more important than the equipment itself. We also support legislation providing for the Secretary to approve training courses. Currently there are no requirements for fishing vessel safety training courses. We believe there should be. We urge that a provision for training be included in a compromise bill.

Regarding the gathering of accident data statistics we support legislation requiring uniformity in the collection of accident data for all vessels in commercial serivce, regardless of whether they are documented or numbered. We further support the collection of specific casualty data for the fishing industry. The lack of data is one reason that it has taken this long to develop a comprehensive approach to fishing vessel safety.

USMSA supports the creation of the Fishing Vessel Safety Advisory Committee. USMSA looks forward to assisting this important Advisory Committee in formulating workable lifesaving equipment regulations for the fishing industry.

This concludes our comments on this important legislation. We hope the committee will expedite the final drafting of a combined bill, and that this year will see the successful passage of fishing vessel safety legislation.

Thank you for your time, and thank you for listening.

Senator CHAFEE. Okay. I'm going to ask you to demonstrate that. I see that the TV people arrived so since——

Mr. SWITLIK. We have a problem with the life raft in that there's very little space here.

Senator CHAFEE. We'll make space. We'll move the table.

Mr. SWITLIK. What I suggest is we wait until after everybody——

Senator CHAFEE. I'll tell you what. They're set up.

We'll do it now. How much space do you need?

Mr. SWITLIK. It's 10 feet in diameter. Of course when it inflates, it's 10 feet in diameter.

Senator CHAFEE. It's going to be a spectacular exhibit.

Mr. SWITLIK. At which time I'm not quite sure it's going to be.

Senator CHAFEE. We're going to test your equipment.

The room is sinking and we want to get on that raft.

Mr. SWITLIK. This is always like the nightmare of a student not being prepared for the exam. Life raft manufacturers are always afraid it won't work in demonstrations, but confident it will work in an emergency.

Senator CHAFEE. We'll put you to the test here. When they're set up, they can let me know. Let's go and see this.

Mr. SWITLIK. All manufacturers have a device that's similar in design, although we manufacture to our own standards which we feel are good. There are some products out on the market where the quality——

Senator CHAFEE. You say it's not a raft. It's what?

Mr. SWITLIK. It has no canopy. It is a flotation device which is——

Senator CHAFEE. You can climb up in it?

Mr. SWITLIK.——out of the water, yes, to raise yourself above water.

Senator CHAFEE. Now, how heavy is it?

Mr. SWITLIK. It's 45 pounds.

Senator CHAFEE. 45 pounds?

Mr. SWITLIK. Okay.

Senator CHAFEE. All right. Now, and how many can get in it?

Mr. SWITLIK. It will support six with an overload capacity of 10.

Senator CHAFEE. All right. Clong, clong, the vessel is sinking. Let's see what happens.

Mr. SWITLIK. Okay. You snap this, pull the lanyard. The lanyard will, of course, be attached to the vessel. When it gets to the end—CO_2 in cold temperature, and this has been in the trunk of my car, it takes a bit longer to inflate.

So that's below standard right now. It is ready to board now.

Senator CHAFEE. I see. These are ropes to hang onto?

Mr. SWITLIK. Yes.

Senator CHAFEE. By the side?

Mr. SWITLIK. And an equipment kit which has a repair kit and Coast Guard approved flares inside.

Senator CHAFEE. And these are obviously to hang on when you're on it?

Mr. SWITLIK. Yes.

Senator CHAFEE. And—well, you passed that exam quite well, I'd say. That's spectacular.

From the AUDIENCE. Senator, do they have a gauge on there so you can tell the condition of the CO_2 cylinder?

Mr. SWITLIK. No, there is no gauge. It would require annual inspection.

From the AUDIENCE. I would think that a visual inspection gauge would be better.

Mr. SWITLIK. The problem with a visual reference string is it's inside a canister. You're going to get condensation. I think it's impossible to build anything that's impervious to the effects of sea water or marine atmosphere.

Senator CHAFEE. What's this over here?

Mr. SWITLIK. That's the CO_2 cylinder.

Senator CHAFEE. I see.

Mr. SWITLIK. And sea anchor retarded grip.

From the AUDIENCE. Is this among those items that would be required in the legislation?

Mr. SWITLIK. Well, the legislation requires two life rafts. There has been concern in the commercial fishing industry that the Coast Guard approved life raft as it's now constituted is much too large to fit on smaller vessels; and because it has a double canopy and inflatable floor, it has provisions for several days. It's intended for transoceanic voyages.

Senator CHAFEE. Where most of these boats would be in areas, particularly with a color like this, where there would be heavy rescuing efforts, and they would be picked up rather quickly——

Mr. SWITLIK. Yes.

Senator CHAFEE.——if they can survive, I assume?

Mr. SWITLIK. We in our industry feel that operating beyond 20 miles still needs the soleless type of life raft, but what we're trying to demonstrate here is that there are alternatives to what has been seen and approved by the Coast Guard in the past. We would like the Coast Guard to establish regulations and standards for devices like this so that the customer knows that it's going to be manufactured to a certain high level.

Senator CHAFEE. What do these retail for?

Mr. SWITLIK. This particular one retails for about $1100, and they range up to about $1500 for the simple platfrom.

Senator CHAFEE. If you increase your production, could you bring down your price?

Mr. SWITLIK. That's difficult to say.

Senator CHAFEE. Sure.

Mr. SWITLIK. We are depending on a lot of other suppliers on it. Because they are constructed by hand, it is very labor-intensive. They are almost each one custom-made.

Senator CHAFEE. What's the other equipment you've got?

Mr. SWITLIK. This——

From the AUDIENCE. I'm still not clear on whether this is a required type of life vessel.

Mr. SWITLIK. There is no regulation currently speaking to a minimum size life raft. I have some literature.

From the AUDIENCE. There's nothing in the pending legislation or nothing now?

Mr. SWITLIK. The pending legislation says life raft, and we are concerned about how life raft ultimately gets defined. The way life raft—approved life raft is defined now is based under the soleless convention which is an international convention regulating large vessels, so it's a large raft meant for transoceanic work. We feel that this has been reprinted in the Ntsb report. There probably ought to be an approval process for three different ranges of life rafts, for vessels zero to 3 miles, 3 to 20 miles and beyond 20 miles from the shore.

From the AUDIENCE. So you want to reassure people who are concerned that they could not fit a life raft on their small boat that yes, you can fit something?

Mr. SWITLIK. Yes, there are devices that can work, but we would also like to see the legislation to ask for approval process from the Coast Guard for a variety of appropriate equipment. Our industry is not interested in selling inappropriate equipment.

Senator CHAFEE. Let's get on with the hearing.

Mr. SWITLIK. This is a survival suit. I was asked to bring one of these up. Some people have never seen one.

Senator CHAFEE. Bring it over here.

Mr. SWITLIK. The survival suit, although I didn't pack it that way, would be stored with the zipper down. It is quick donning, covers the person. There's another buoyant chamber.

Senator CHAFEE. Suppose you have your boots on and everything?

Mr. SWITLIK. You should keep your boots on. This is what they're instructed to do in Alaska because in Alaska——

Senator CHAFEE. Can you get into this quickly?

Mr. SWITLIK. Reasonably quickly. I don't know if I'd try it in a suit.

Senator CHAFEE. Let me try.

Mr. SWITLIK. The way to try—the way to put it on is to put it out on the floor, sit down, extend your legs into the feet.

Senator CHAFEE. Well, I'll tell you if your boat is sinking——

Mr. SWITLIK. The Coast Guard standard on survival suits requires that these be able to be donned in 60 seconds, and it may require practice, and this is where the training portion would be required.

Senator CHAFEE. Let me try it, 45 seconds so far.

Mr. SWITLIK. Once you know the principles of donning this and you've practiced——

Senator CHAFEE. If goes faster?

Mr. SWITLIK. It is simple and you can do it speedily.

This is the problem, though, that many people buy safety equipment and they have no idea of how the safety equipment is performed. They've never examined it. They've never looked at it. It sits underneath a bunk or in the pilot house.

Senator CHAFEE. How do I get that off?

Mr. SWITLIK. You grab the zipper.

Senator CHAFEE. Wait a minute.

Mr. SWITLIK. We don't want to put your tie in it. Grab the zipper.

From the AUDIENCE. How long can you survive in that?

Mr. SWITLIK. It depends on the water temperature, 12 to 18 to 24 hours.

Senator CHAFEE. This has buoyancy to it?

Mr. SWITLIK. Yes, it does. It has adherent buoyancy in the foam, and there is a separate device which is inflatable orally which keeps you floating in an upright position.

Senator CHAFEE. And this pulls over?

Mr. SWITLIK. Yes, the hood pulls over.

Senator CHAFEE. And what are these?

Mr. SWITLIK. This is the buoyant part of it that keeps you floating upright, and then there is a pocket for a strobe light.

Senator CHAFEE. Is that right?

Mr. SWITLIK. Well, it's not twisted down. You have to push down on this, push in. This demonstrates the necessity for training. I mean the first time that you see something you wouldn't want to have that same kind of difficulty when your vessel is leaving from underneath it.

Senator CHAFEE. How much do these retail for?

Mr. SWITLIK. The list price is around $300, but I don't think any of them are sold for that. The retail price that the manufacturers of these suits have told me to quote is around $250, although they may even be discounted further than that.

Senator CHAFEE. Well, the price would come down on these?

Mr. SWITLIK. Yes. The discounting that goes on on a retail level is pretty high in all of the equipment.

Senator CHAFEE. Until he gets in this in the cold water, he could survive, you said, for 18 hours?

Mr. SWITLIK. Dependent on the individual's mental attitude, the other conditions, whether there were any injuries, but approximately so, yes, 12 to 18 to 24 hours.

Senator CHAFEE. Could you give me a hand-out of this?

Mr. SWITLIK. Sure. In Alaska they recommend you keep your shoes on because you might be washed on a remote shore, but around here if you get washed on shore you just go to the 7-11 and make a phone call.

And I have one other item that I was asked to bring.

This is the only one I could obtain on short notice. This is an EPIRB. I won't bother to demonstrate this here because you might get a Coast Guard helicopter flying in on this. This is an emergency positive indicating radio beacon. These retail in the area list price of around $300 depending on the category, although there again they are heavily discounted by dealers.

Senator CHAFEE. How much did you say, $1,100?

Mr. SWITLIK. No, $300. These are heavily discounted, and you can probably purchase these for around $200.

Senator CHAFEE. And these would be for each individual?

Mr. SWITLIK. No. This is an individual personal one. This is my own personal EPIRB. Whenever I go out on a boat, I carry it with me.

Senator CHAFEE. What do you call it?

Mr. SWITLIK. An EPIRB, emergency position indicating radio beacon. It's a—the current standard for EPIRBs, it broadcasts on an aircraft radio frequency but which is also picked up by the satellite system. There is a new proposed EPIRB system which will focus totally on the satellites, and so we'll be able to pinpoint a survivor in the water or where an EPIRB signal is coming from to within about 2 miles.

Senator CHAFEE. And the idea would be that each crewman would have——

Mr. SWITLIK. No, one for the boat. This, as I say, this is a personal one. The regulation I think contemplates——

Senator CHAFEE. Would there be—by the way, I presume they're water resistant?

Mr. SWITLICK. Yeah. This can be packed up into a life raft?

Senator CHAFEE. So they can pick it up. All right.

Anything else you've got?

Mr. SWITLIK. Not that we can do on show and tell.

From the AUDIENCE. What is the shelf life of these rafts?

Mr. SWITLICK. The raft, well, with annual servicing it should last a minimum of 10 years. We have been manufacturing marine life rafts for 25 years, and we still have many of our original 25-year-old life rafts still in service. But to be on the safe side, we use a 10-year life.

Senator CHAFEE. All right. Why don't you get set up again, please. What—this is addressed to Dr. Nixon.

What puzzles me about this whole business is everything seems to make sense what we're suggesting, but nothing happens, and as you say, this has been going on for several years and you've got a high level of frustration; but I would think a fisherman, and we're going to hear from Mr. Mccauley, but I would think a fisherman would like a method of being compensated, a crew member, rapidly if he was injured in some fashion.

Now, suppose he does not have the loss of a limb or a finger or something. Let's just say he got a broken arm.

What happens under the current system?

Dr. NIXON. A lot of things can happen. If he's lucky——

Senator CHAFEE. Let's say he has a very amicable relationship with his skipper. The skipper and the owner are good people. They do their part, and there he is. What happens? He breaks his arm. A piece of equipment on a trawler fails and he smashes his arm, okay.

Dr. NIXON. At this point——

Senator CHAFEE. But it's going to heal. It's not permanent.

Dr. NIXON. Right. There are no ground rules set at this point. The individual crew member, who may be a good friend of the captain, is told "don't worry—I've got PMI insurance. I'll call the PMI carrier." At that point it's entirely up to the insurance company to decide just what level they're going to pay this injured fisherman. There is a floor called maintenance and cure which exists right now, and the daily figure is between $8 and $12 a day here in the Northeast. It's up as high as $30 and $40 in the Northwest.

Senator CHAFEE. Who sets that?

Dr. NIXON. That was initially set by a National Maritime Union contract in 1930 and has not been substantially updated.

Senator CHAFEE. But that has nothing to do with the nonunionized fisherman?

Dr. NIXON. No.

Senator CHAFEE. It's standard?

Dr. NIXON. The maintenance figure has ranged from that $8 to $12 to $15 figure here in the Northeast for some 50 years. The owner, or his PMI carrier, is also required to pay the medical bills immediately as well. That's quite clear. The medical bills have to be paid for.

Senator CHAFEE. Who says that?

Dr. NIXON. The maintenance and cure concept. This is an old concept that's been around since the founding of the Republic, that when someone is hurt aboard the vessel, the vessel owners must cure him, must fix that arm and must maintain him, provide him with food and lodging, but over the years that has eroded when that dollar figure got stuck at 8 to $12 a day. That's what we're arguing for today, to essentially expand that concept of maintenance to provide someone with a living amount of money under 1987 rules.

Looking at the cases I've examined from around the country, that same broken arm would receive in one port $5,000 and in other ports $300,000. The same injury, the same loss of income but because the current system we have now is a crapshoot, highly dependent on your trial attorney and the insurance company.

Senator CHAFEE. No, no, no. I'm not getting into the trial attorney. I'm just saying forget suing. Let's just say the person, as I say, everything is friendly; the owner of the vessel is a decent person. What happens? Is the crew member just on his own to wrestle with the insurance company; does the owner of the vessel do nothing; is it just you're out there and do the best you can; if you sue, you sue and if you don't, that's your business?

Dr. NIXON. Typically an owner in an amicable relationship does try to help the injured fisherman. However, keep in mind that in the insurance business there are the friendly people, the good hands people, who sell you the insurance policy, and then there's another room of gorillas, the claims people, who don't want to pay any money. It's not those friendly people who sell you the policy who end up writing you the claims check.

So the vessel owner calls the insurance company and says, take care of my crew member. The insurance company then says, all right, we'll pay the medical bills but, we're not paying more than 10 bucks a day. The vessel owner says, sorry, 10 bucks a day doesn't make it in 1987; and they say, look, this is a policy of indemnity. We're only required to pay what you're required to pay, and that's $10 a day.

At that point the injured crew member says, I'm sorry, but I can't live on $10 a day. This lawyer here says the vessel owner was negligent and I can get more. I can get enough to pay my mortgage payment if I talk to this lawyer, and he at least files suit on my behalf.

Senator CHAFEE. So in every kind of an incident is there a suit?

Dr. NIXON. No, sir, there's not, largely because in most cases the injury is minor, the period of disability is brief and in many cases, for example, the Point Judith Cooperative has a welfare fund. Sometimes fishermen carry their own disability insurance. The cases are handled in a variety of different ways, but in most cases there was a tremendous amount of injustice. If they had been working in a factory ashore in a much safer occupation, they would have recovered more for that injury in terms of workmen's compensation than they would have working aboard that fishing vessel; and that's where I think the fundamental unfairness of the current system plays out.

Senator CHAFEE. I just can't understand why there hasn't been more of an uproar over this.

Dr. NIXON. Senator, there's been 30 years of uproar.

Senator CHAFEE. Well, obviously the trial lawyers are defeating the fishermen?

Dr. NIXON. Yes, sir.

Senator CHAFEE. And as somebody who's been interested in this for some time, we don't hear as much from the fishermen as I thought we'd hear. Now, they are a fragmented group to start with. They're independent. They do have organizations, but the organizations themselves are fragmented. So it doesn't come to the attention of the Congress to the extent I think it should, and as you say, they got roundly defeated in the floor of the House. What was the vote last year?

Dr. NIXON. We lost by over 100 votes. I think largely,

Senator, most fishermen don't think it's a problem until they themselves are injured.

Senator CHAFEE. But after all, if 250 vessels are lost a year, there must be a stream of injuries in addition, in other words——

Dr. NIXON. Yes.

Senator Chafee.—if you discount, you say, all right, it's the most dangerous occupation because of loss of life, but it clearly must be one of the most hazardous occupations for accidents, never mind loss of life, isn't it?

Dr. NIXON. Yes, it is.

Senator CHAFEE. I mean all that equipment, I've been on those vessels and been out just in a day trip, an 18-hour trip, and there are a lot of things going on at once on the deck of that vessel.

Dr. NIXON. A lot can be done to make it safer, a lot can be done. The Point Club has developed 100 standards to make that working platfrom a safer environment.

Senator CHAFEE. Let me ask you something else, one of the problems is if you would develop these regulations and you say a vessel must be approved by the Coast Guard and the crew must be—must have 40 hours training, or whatever it might be, the answer comes back from the owners and from the insurance companies, the Coast Guard manpowerwise can't do this. They cannot come out to Akiachak, Alaska, to inspect some vessels, and with these vessels scattered all over the place and the Coast Guard has got so many duties levied upon it now, particularly with the drug wars going on, that the Coast Guard just plain doesn't have the manpower to go and inspect—how many fishing vessels are there?

Dr. NIXON. Thirty-five hundred is the number the National Marine Fisheries Service uses.

Senator CHAFEE. You take that times five which would be the number of crew, five or six or whatever it might be.

Dr. NIXON. Three.

Senator CHAFEE. Three, and then every one of them has to go through a course of some kind. The Coast Guard can't—so what good does it do to have a set of regulations?

Dr. NIXON. Well, I think the best part of the bill perhaps might be the Commercial Fishing Vessel Advisory Committee that will help with developing the regulations. You're exactly right, a Bering Sea factory processor does not have the same problem as an inshore lobster fisherman in Rhode Island. We'd clearly have to recognize those differences. If we make some equipment change requirements, and I think what's been suggested in this bill are in fact good changes in the minimum equipment standards, keep in mind that a vessel owner wants to insure his vessel, and one of the first questions in the insurance application form is, has your vessel complied with all Coast Guard requirements for this class of vessel, and the surveyor which comes aboard checks to see that it's complied with all the Coast Guard regulations.

Senator CHAFEE. What are the Coast Guard regulations?

Dr. NIXON. Right now it's a very short list for fishing vessels. What I'm suggesting is that if you added these, it would be something else the surveyor would check off on his form, and in fact we wouldn't need Coast Guard personnel on board every fishing vessel. They do go aboard fishing vessels fairly often anyway, and these would be a few more things to check for. I don't think the——

Senator CHAFEE. You mean they go aboard them in connection with the catch?

Dr. NIXON. The fishery management issues, drug interdiction, whatever. They are aboard vessels. This would be something else they would look for beyond just a simple life jacket, a personal flotation device. On the licensing issue, however, I think you do present a pretty grim picture of 35,000 times three or four men all of a sudden needing licenses. I don't think that necessarily is called for.

If you look at the casualties that have occurred, they are largely on the big end of the spectrum, the larger vessels, the offshore vessels, 50 to 60 feet and up; and I think we're talking about issues involving stability, involving real knowledge of offshore navigation that perhaps ought to be involved in a licensing program, but I think we're talking about a small percentage of the U.S. commercial fishing industry. The bulk of those 35,000 vessels are small boats.

Senator CHAFEE. Well, do you think we should deal with a lobsterman that goes out from Prospect Harbor, Maine, he's alone and he may take his son with him once. It's really a one-man job. He goes out and tends 300 pots, whatever it might be?

Dr. NIXON. Historically, that's been a very safe fishery, Senator, and I don't think licensing would be necessary or appropriate there. I think something like the survival suit and the flotation device like this is appropriate for even a small vessel like that. Those vessels do sink, they do flood. It certainly would enable the Coast Guard to have the time to go out and perform an air sea rescue. I don't think there's too much you can teach a lobsterman about what he needs to do at sea within his 3 to 4-mile range.

But I'd also like to point out if we come up with an exam, it would have to be able to be given orally in perhaps seven to ten different languages because fishing in the United States of America is very much an ethnic business.

This would be a very complex regulatory program for the Coast Guard to undertake and they know it, and that's why historically they've said perhaps this is something the industry ought to tackle on its own.

Senator CHAFEE. What do you think about the industry? How about this insurance business? I mean once upon a time insurance companies, certainly the factory mutual companies grew that made their reputation by stressing preventive maintenance, in other words, having fire inspections and safety inspections in factories so they wouldn't burn down. Now, maybe the insurance companies do it already. Aren't they fussy, don't they care what the vessels——

Dr. NIXON. Senator, they're fussy in slump periods in the market. When money is tight, when really just the classic fishing vessel insurance companies are left, yes, then they do require surveys. They look at equipment; they want to make sure they have a good operator. But because this is a cyclic business, whenever we go into a period of high interest rates, we get into cash flow underwriting, a lot of companies enter the business and begin slashing prices. They simply don't care what's on board. They want to get those premium dollars on January the 1st, invest them at 18 percent through the year so by the time the claim comes in in December, they've made a pile of money. It doesn't really matter to them.

I've gone to the American Institute of Underwriters.

I've spoken to their board of directors, their Fishing Vessel Safety Committee and said, why aren't you doing this, just the question you asked; and they said, look, it really doesn't matter to us. We simply adjust our premiums to account for the losses that come in.

They assert that the person who goes to sea has the burden for providing a safe platfrom for himself. "We are not going to presume to know what it takes to make a Bristol Bay gillnetter or a lobster boat or Gulf ship fisherman safer. That's beyond our knowledge. We're just businessmen in New York. They should know. They should take those precautions, and if they don't, we'll charge a higher premium next year."

Senator CHAFEE. I would think somebody would be around and say, look, I'll offer a lower premium in return for this vessel being more seaworthy and with the safety equipment on it. I won't charge such a high premium; thus, I will get more business.

Dr. NIXON. Senator, there are pockets like this around the country. In fact, The Point Club Jim McCauley will be discussing, is an example of good fishermen who banded together, and our long-term goal is, in fact, to lower those premiums, to start our own company and take our destiny into our own hands.

Senator CHAFEE. Why aren't there more Point Cooperatives, Point fishermen?

Dr. NIXON. Largely because it takes a group of people who trust each other in the first place. The Point Club grew out of the Point Judith Fishing Cooperative where there's a 30-year history of men working together, sharing financial information towards a common objective. That is often not present in the rest of the country. It's mostly characterized by independent operators who went fishing because they didn't like working with other people onshore anyway, and the idea of banding together and financially sharing risks is somewhat foreign to most of the industry.

Senator CHAFEE. Do you think it's—we're settling for short shrift here when we have a bill that has eliminated anything to do with permanent injuries?

Dr. NIXON. Well——

Senator CHAFEE. Just to explain the background for those here, we tried a bill last year that in effect was like workmen's compensation. Workmen's compensation says if you lose a limb on the job, then you receive X dollars. The trial lawyers fought that bitterly and said, you're taking away the individual freedoms of a fisherman, a crew member, by setting a cap on how much he received for a loss of a limb, a finger or whatever it is; and thus the only thing that we'll even consider in compensating in a bill is what they call temporary injuries, and that is something that is going to be healed, cut, broken limb.

Now, do you think we're not getting much by settling for just the temporaries?

Dr. NIXON. No, Senator. In the study that I did, we found very clearly that the big problem area was the temporary disability. The permanent injuries we examined came in with dollar figures that actually worked out very closely to what somebody would have gotten in a workmen's compensation scheme. Those numbers are high, but they're high in any industry when someone is permanently disabled from a work-related injury.

Senator CHAFEE. We're not saying permanently disabled. If you lose a finger, it's a permanent injury, but it's not permanent disability.

Dr. NIXON. It can be a permanent partial disability depending on the kind of occupation you have.

Senator CHAFEE. I see. So you think that we haven't had to give up the store?

Dr. NIXON. No, I don't. I think it hits at the worst part of the problem. The problem that, A, a deserving fisherman doesn't get what he needs and, B, someone because of the skill of an attorney and the willingness of a jury to go along with an argument that he gets far in excess, ten, 50, 250 times in excess of what his lost wages were and medical expenses over the period of the injury.

Senator CHAFEE. Now, in the bill I've got it's 80 percent of wages, and the House has 66-2/3. What do you think of those?

Dr. NIXON. My recommendation to the House several years ago was the 66 figure. It turns out that when you examine the 66 versus 80 in terms of total amounts paid out, there isn't that great a difference in terms of total amounts paid.

However, there could be a psychological problem, a perceptual problem that if someone is earning 80 percent of his wages while disabled and is tax-free as disability income is, that the incentive to return to work is diminished. So I think the 66 figure is very important.

Senator CHAFEE. So you would go with the 66. Let me ask you this, is there going to be a dispute over what is wages? In other words, a crewman is on a percentage of the total take, obviously that's not constant. How do we know what his wages would have been, how do we figure that?

Dr. NIXON. Well, the vessel keeps records throughout the year. The way the bill is structured when the vessel is not fishing, he's earning $30 a day. When it is fishing, he gets the—let's say 66 percent of what he would have gotten. Those share of figures are worked out——

Senator CHAFEE. Do you think that's fair?

Dr. NIXON. Yes, sir, I do.

Senator CHAFEE. The answers you've given, are they national answers applicable as much to the West Coast and to Alaska, for example, as they are to the East Coast?

Dr. NIXON. Yes, sir. In fact some of the strongest support I've seen for the bill has been in other parts of the country, in the Northwest, the tuna fleet in San Diego, The Texas Shrimp Association. We've worked all over the country, and there is a strong support for it.

Senator CHAFEE. Strong support from who?

Dr. NIXON. Well, keep in mind that I'm talking about fishermen's associations. In many cases a group like the North Pacific Fishing Vessel Operators Association is composed of vessel operators, but keep in mind that the crew members on board are the next generation of operators, and they're heavily involved in the decision-making process. We're not talking about owners putting something over on crew members. All the crew members I've spoken with don't want to have to go to see a lawyer to get what's due them.

Senator CHAFEE. Why don't we get better support from Senators on this? Just take Senators. Why don't we get the West Coast—well, we've got Senator Adams. Why not Alaska

Senators?

Dr. NIXON. I see that answer coming around.

Senator CHAFEE. Maybe I ought to be the one answering that.

Dr. NIXON. Look at the contributions.

Senator CHAFEE. You think it's the power of the trial lawyers?

Dr. NIXON. Yes, sir, I do. I think what's at stake here is the future of Mercedes-benz dealers across the country.

Senator CHAFEE. That's pretty tough talk.

Dr. NIXON. I've been at this for five years, and like I said, the most disillusioning day of my life was the day that bill went down in defeat, and it's because 40 men went with checkbooks for political action committees to the House of Representatives. Two days before that bill was going to be voted on we knew we had support. They turned it around in two days. Yes, I am disillusioned and I'm upset.

Senator CHAFEE. All right. Well, thank you. Well, we got most of your testimony and the questions and answers.

Mr. SWITLIK. I can get more information to your staff later.

Senator CHAFEE. Fine. Thank you very much for coming, both of you.

Let's go with the next panel. Why don't we take Ms. Janice Defrances next. Ms. Defrances? Okay. Ms. Defrances, why don't you go ahead. Tell us your view on this legislation, your experiences.

STATEMENT OF JANICE DEFRANCES

Ms. DEFRANCES. I'll read my statement as I have it written here.

Senator CHAFEE. That's fine. Maybe you could pull your chair over a little bit more and just speak right into that mike. That would be good. Go ahead.

Ms. DEFRANCES. Senator Chafee, Senator Hollings and the Committee on Commerce, Science and Transportation, I'd like to thank you for this opportunity to testify at a field hearing of a bill for S. 849, the Commercial Fishing Industry Vessel Safety and Compensation Act of 1987.

First, I would like to express my endorsement of the bill. Time is of the essence. Each day and week brings news of more casualties and deaths on board fishing vessels.

Each year Rhode Island loses fishermen to the sea. Unless there is legislation to mandate safety training and standards, the tragic problem will only escalate beyond its currently critical state.

Without the passage of legislation, specifically, the bill S. 849, the lack of safety measures and perils of this hazardous industry on uninspected and ill-equipped fishing vessels will continue to grow at alarming rates. We need to make every effort to make fishing a prosperous and safe profession. We desperately need this legislation to mandate safety requirements for commercial fishing vessels.

I became aware of the lack of safety standards and the hazardous conditions which exist in the fishing industry due to personal tragedy. My fiance was lost at sea on January 16, 1981 due to a fishing accident. Vincent lost his life to the lack of safety measures on board, the lack of expertise of the crew to rescue a man overboard, and the lack of rescue equipment being accessible.

Since that date many more needless deaths and individuals have been lost at sea. The bill's intent is to promote safety on our fishing vessels. Some of the deplorable conditions on board and the lack of safety equipment contributes to the fishing industry being classified as the most dangerous occupation in the United States. This bill is the beginning to saving lives.

In addition to the minimum safety provisions stated in the bill, an important element cited by the National Transportation Safety Board is missing; that is, the need for safety certification and periodic inspection of uninspected commercial fishing vessels.

This mandatory inspection of fishing vessels will be able to routinely check the safety equipment and standards on vessels. These checks amy alleviate accidents which concur due to—this is a quote from the Safety Board's report to the absence of equipment of the Western Sea—the absence of an Epirb which allowed the accident to go undetected for some time, the absence of exposure suits which drastically limited the survival time of crew members in the water, and the absence of the inflatable life raft. This bill addresses both safety standards and a compensation for temporary injury incurred by seamen on fishing vessels.

The current system for dealing with litigation for temporary injuries is ineffective. It is felt that this legislation should also incorporate some sort of appeal section for cases which may require a higher or lower payment than indicated on page 3, line 7 to 17.

It is stated on lines 18 to 23 that the figures of compensation are subject to possible increase or decrease, but this is in relationship to the Consumer Price Index. The request for an appeals would be in cases in which there are some extraordinary circumstances that want a higher payment of compensation given to the fishermen and his or her right to request this payment based on those circumstances. It is felt that the implementation of minimum safety standards on each fishing vessel will decrease the frequency of these compensations due to injuries.

In addition to the safety standards, it is felt that the mandatory licensing of captains requiring them to understand stability, the use of lifesaving equipment, rules of the road, fire-fighting and water-tight integrity will be instrumental in reducing the high loss of lives. This may not be able to be addressed in this current legislation, but there needs to be a subsequent legislation in order to impact the mandates of this bill.

The required life-saving equipment including exposure suit, Coast Guard approved life boats or life rafts, emergency radios, fire detection and fixed fire-fighting systems and dewatering systems is appropriate for this legislation. An additional provision which is necessary in order to utilize this safety equipment is the need to require fishing vessel captains and owners to provide minimum safety training to all crew members.

At this current time there are no requirements to have licensed personnel, and there are no manning requirements.

Anyone at this time can operate a fishing vessel with no experience, no knowledge of safety issues or procedures, no training, et cetera. It is no wonder that there have been needless tragedies when there has been such careless attention and lack of requirements to this profession.

As I have stated before in other testimony, because there is no legislation, there is no guarantee that crew members are trained in safety and emergency procedures.

Unfortunately, many crew members and captains have the attitude that it will not happen to them or that there is nothing one can do, for it is the nature of their work.

I would like to point out that that's not—that's just a general statement. That doesn't include all fishermen.

It does not have to be so hazardous. It is incredible to imagine that anyone would take their crew and themselves out to sea without the necessary emergency and safety equipment on board as well as the knowledge of how to use it, but again, these travesties happen endless times.

No one can bring Vincent back, nor the many others that have died at sea due to the lack of safety and emergency procedures. However, without question, this legislation will prevent many of the needless deaths by mandating better safety standards. We cannot delay passage again, for the cost of lives is too great.

I propose if the compensation provisions in this bill elicit opposition as before when the association of Trial Lawyers of America refused to endorse a combination of a compensation and safety law, then these two salient parts of this legislation should be separated in two distinct bills.

As controversy over legislation transpires, at least the bill regarding mandatory safety practices can be implemented.

Senator CHAFEE. Well, thank you very much, and that's an interesting suggestion about the separating out of the two sections, the safety versus the compensation. You mentioned about the appeal section. That's an interesting suggestion, too. I think one of the philosophies of the workmen's compensation is that there be no form—there's a tradeoff. The worker is paid regardless of fault on his part, and so the worker is covered regardless of what happens, even if he stuck his hand in the machine.

On the other hand, the owner is protected by having a limitation on what the payment will be, and the virtue of the system is that there's rapid payment. It's a no-fault insurance effect and it doesn't go on and on and on through appeal after appeal.

In the particular situation that your fiance was involved in, as I understand it, he was knocked overboard and if they had had something like this that they could throw quickly to him, a raft or something of that nature, rapidly available, there's a belief he would be saved. Is that what the witness is saying?

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Ms. DEFRANCES. Yes. I reviewed the Coast Guard report last week, and in that report the crew member cited the accident. They said that Vincent was knocked overboard, that he was swimming towards the boat. At that point one of the crew members alarmed or tried to get the captain who was in the engine room to get to the wheelhouse to turn the boat around, but the wheel was not turned fast enough to make a Williamson turn. Because of the lapse of time, they weren't able to get to him soon enough. He still continued to swim.

By the time they did get alongside of him at that point he was starting to submerge. They could not throw a life line or a life ring because they were tangled in knots across the top the boat.

The equipment was on board. There were six life jackets on board. Neither Vinnie wore one, nor was one thrown to him because they were not accessible. So I believe it could have been perhaps a different situation if those things were available.

Senator CHAFEE. Do you think—well, I agree with you on all the points you made, both the equipment and the training, and in this bill we don't get into the exact details of how that is to come about. We have—what do they call the group, the advisory group. We have an advisory group to set up how this is actually done. Dr.

Nixon discussed the problems of the Coast Guard's time, and he indicated that maybe some of the larger vessels the Coast Guard would specifically inspect and the smaller vessels, there would be different techniques from this advisory group.

Well, I appreciate your testimony, Ms. Defrances, and thank you for coming because you add a specific to this, and that's why we're here, trying to do something about this.

Thank you very much.

Ms. DEFRANCES. Thank you very much.

Senator CHAFEE. Mr. Nall. Mr. Nall is a member of the—there are five members total in the National Transportation Safety Board. Mr. Nall is one of them. Why don't you tell us a little bit about what the Safety Board does. What's your range? You get into aviation accidents, too, don't you?

Mr. NALL. The NTSB, Senator, has been well-known over the past years as an aviation investigating organization.

Probably 60 percent of our time is devoted to aviation accidents, but we also investigate selected rail accidents involving passenger trains or where there are certain dollar limitations, marine accidents of the nature we're talking about now plus other major marine accidents, certain surface accidents, and lastly hazardous materials and pipeline accidents that occur.

Senator CHAFEE. As I understand it, in fishing vessel losses, you do not investigate automatically except if it's six lives lost or more?

Mr. NALL. That's correct, Senator, as well as some other criteria.

Senator CHAFEE. All right. Why don't you proceed.

STATEMENT OF JOSEPH NALL, MEMBER, NATIONAL TRANSPORTATION SAFETY BOARD; ACCOMPANIED BY WILLIAM GOSSARD, BUREAU OF SAFETY PROGRAMS; AND RACHAEL HALTERMAN, CHIEF, OFFICE OF GOVERNMENT AND PUBLIC AFFAIRS

Mr. NALL. Thank you, Senator. With me today is Bill Gossard of our Bureau of Safety Programs and the principal author of the uninspected commercial fishing vessel study as well as Rachael Halterman who is Chief of our Office of Government iand Public Affairs. Ms. Halterman is standing in the back.

Senator CHAFEE. We welcome all three.

Mr. NALL. The safety board appreciates this opportunity to appear before you today to discuss S. 849. We are very pleased for your time and consideration of this important legislation and your entire support for improved fishing vessel safety. My remarks will be of a summary nature and will not include all of the remarks that we have submitted for the record.

We do investigate all major marine accidents that occur on navigable waters of the U. S. in one of three ways: By conducting our own investigation, by participating in a joint investigation with the Coast Guard or by requesting that the Coast Guard conduct an investigation for the Safety Board.

In addition to accident investigations and issuing safety recommendations, the Safety Board undertakes studies that address safety issues developed through our accident investigations. We have, as you know, investigated 203 accidents from 1978 to mid-1987 regarding the safety needs for the uninspected commercial fishing vessel industry.

Today there is no requirement that commercial fishermen who work on U. S. uninspected vessels complete any training necessary to perform their job safety, for the federal requirements for safety equipment applicable are inadequate.

The Safety Board believes the component to improve the safety level of these vessels already exist in the Coast Guard's technical circular and various training courses. We believe the Coast Guard should establish training requirements for captains and crew members commensurate with their respective responsibilities.

Senator CHAFEE. Let me just interrupt if I might at this point. I think it's important to get across, to stress that there are, you say in your testimony, in 1986 which is probably the last year you have figures for, there are approximately 100,000 commercial fishermen operating in the U. S. on 33,000 vessels, uninspected vessels. That means these vessels have no inspection from—not requiring inspection from anybody, Coast Guard, no government agency whatsoever; is that correct?

Mr. NALL. That is correct, sir.

Senator CHAFEE. And, furthermore, there is absolutely no requirement of any safety equipment or measures on these vessels?

Mr. NALL. There are some minimal requirements.

Senator CHAFEE. Some minimal requirements, you've got to have a life jacket?

Mr. NALL. That's correct.

Senator CHAFEE. But as far as the radio beacon they discussed or any form of a life raft or wet suit or——

Mr. NALL. Communications equipment.

Senator CHAFEE. Zero?

Mr. NALL. That's correct.

Senator CHAFEE. And I believe that the vessel that Peggy Barry's son was on off Alaska, he was lost in, I believe, 1985?

Mr. NALL. I believe so.

Senator CHAFEE. That vessel was built before World War I that he was lost on. And operating off Alaska in those tumultuous waters, to give an indication of what the situation is now in the United States.

All right. Why don't you proceed.

Mr. NALL. We would request, as I say, the Coast Guard to establish training requirements for captains and crew members commensurate with their respective responsibilities, to establish licensing requirements at a minimum for captains and——

Senator CHAFEE. Would you set a limitation on the length of the vessels? You know the question that's going to be asked you. Well, the Coast Guard doesn't have time to race around and inspect every lobsterman upward in the country. Now, what would you say about that?

Mr. NALL. Well, we do want and have recommended to the Coast Guard the licensing of all captains. Now, the licensing doesn't mean that there's a monolithic, singular examination.

Senator CHAFEE. Now, what is a captain, is a lobsterman a captain?

Mr. NALL. I think if his boat were of a certain size, he would be considered a captain. And again the Coast Guard would have to make a determination as to which small boats are excluded and which larger boats are included, so that's really a question of regulatory policy. But assuming we have a ship that meets what the Coast Guard determines to be within the regulatory scheme, then the licensing requirements could be manyfold. You could have two or three divisions somewhat similar to pilots licenses. There's a private pilot, commercial, air transport and so on. So it would be ludicrous to expect a lobsterman who falls under the act to have to pass the same kind of requirements of an ocean-going vessel. So we certainly would recognize the realities there.

One good byproduct of the license requirement is that it helps us identify who the fishermen are for the purpose of sending them information, for the purpose of giving them notice of various safety seminars and other safety information. So we think that licensing, even if it's minimal, has a great deal of benefits to it.

We also would ask the Coast Guard to expand basic life-saving equipment requirements, and I think you've had ample evidence of those issues today.

Next, we recommended that the coast Guard establish stability information requirements. Stability, unfortunately, is one of the most misunderstood areas among most of the crews that we see. Many vessels are altered, as the Senator knows. They originally were manufactured for one type of fishing and then are altered with no additional stability checks being done by naval architects or surveyors.

Consequently, the crews may not know what unstable characteristics that ship may have. We have asked the Coast Guard to develop stability requirements and also have the information published in such a form that it can be readily used by the crews. And, finally, we do request the Coast Guard to require vessel inspection to assure compliance.

Now, we recognize that Coast Guard cannot inspect every vessel. The FAA does not inspect every aircraft. Much of this is delegated to private industry; much of it is done simply on an audit basis. But if a captain knows that his vessel is subject to surveillance and investigation and inspection by the Coast Guard or whatever group is ultimately to have that responsibility, that within itself may create compliance.

Without going into a great deal of detail about commercial fishermen training, we recommend that both for the captain, for permanent crews and also for casual employees, part-time members of the crew.

With regard to licensing, the licensing should be given either orally or in written form. We have no problems with that, and the essence of the examination should cover such areas as vessel safety including navigation and seamanship, rules of the road, vessel stability, fire-fighting, water-tight integrity and the use of life-saving equipment.

Senator CHAFEE. Why don't you just read the example on page 4 for the record. I think they might be interested in it, on the training and what the effect a young woman who didn't have the training was.

Mr. NALL. It's a very vivid and sad example, Senator.

That is, on August 7, 1985 a U.S. uninspected fishing vessel, SEA DANCER, with four persons aboard, sank in Bristol Bay, Alaska. The seas were 16 to 20 feet high; winds were 35 to 45 knots. The captain informed the Coast Guard and several nearby fishing vessels that the vessel was taking on water and needed assistance.

One fishing vessel, PEGGY SUE, reached the SEA DANCER and assisted in the rescue of the captain and two others. One person aboard the SEA DANCER was reluctant to enter the water, even though she was already in an exposure suit. It was all donned and zipped up. She had not been trained in the proper use of such life-saving equipment; and as the vessel sank, she remained aboard.

The captain testified that he saw her appear and then quickly disappear. She has never been seen again. Not only must the safety equipment be aboard the vessel, but there must be regular training in the use.

Senator CHAFEE. In your statement, you said the U.S. inspected or uninspected?

Mr. NALL. Uninspected.

Senator CHAFEE. That's a mistype?

Mr. NALL. That's a mistype, yes, sir.

Senator CHAFEE. It was uninspected vessel. We better correct that one for the record. All right.

Mr. NALL. With regard to stability requirements, there is a very definite need for vessel stability tests and understanding the stability information, so that it is uniformly provided to captains of uninspected commercial fishing vessels.

Senator CHAFEE. Could you read that part on the these courses and explain what the North Pacific Fishing Vessels Owners Association is?

Mr. NALL. The North Pacific Fishing Vessel Owners Association training courses cover fundamental safety concerns of appropriate to uninspected commercial fishing vessel operations. However, those courses are voluntary.

During two years about 420 captains and crew members have attended the courses in the Seattle area. That is gratifying, but there are approximately 16,500 active fishermen to train in Washington State alone. Mandating training for captains and crew members would accelerate attendance of such courses and would no doubt spark development on new private and public training centers.

Senator CHAFEE. Let me just ask you about that, if I might. Most of these captains are pretty salty people, and they're not inclined to think that they need to go to these courses. It's too bad that there couldn't be a reward in some way, in other words, for those who attend, their insurance rates would be lower, if there could be an incentive for people to attend these courses. But have you ever seen that work, that the insurance people will lower the rates?

Mr. NALL. I think for the reasons Mr. Nixon said it is unlikely that is they're not in the rate reduction business. They are in the risk management business, and there's apparently not enough incentive there. That's not to say in some insurance industries there aren't groups that are trying to do something. I think you'll see in workmen's compensation there are some attempts at education. You see incentives in some of the casualty areas of fire insurance where the insurance companies traditionally have mandated alarms and other systems; but apparently there is not in the typical indemnity business that kind of incentive.

The incentive is one of education, to make the crew members, to make the captains aware of the kinds of options that are available, to sensitize them to the fact that accidents are not inevitable.

Accidents are caused by human frailties and human factors—lack of foresight by human beings. That's the kind of accidents we have. We have to teach them that it is not inevitable when you go to sea that you lose people, that we can do some things to improve safety. Those are the incentives, you would think. And I agree with you and your comments earlier, you would think that given the numbers of suits, and the possibility of extreme financial loss, that would be an incentive enough.

Senator CHAFEE. Is that true, many of them are uninsured?

Mr. NALL. About 30 to 50 percent, but that's a very difficult number to come up with.

Senator CHAFEE. You mean uninsured for the loss of the vessel or uninsured for injuries and liability?

Mr. NALL. It would be for both. There is no requirement.

Senator CHAFEE. Totally zero insurance?

Mr. NALL. In the Western Sea accident Mr. Gossard pointed out there was no casualty or indemnity or hull loss coverage.

Senator CHAFEE. So if a seaman on it is injured, he gets zero?

Mr. NALL. He would have to look to the assets of the company for whom he was working, his employer. Whatever he gets is whatever is left.

Senator CHAFEE. All right. Why don't you continue.

Mr. NALL. With regard to the life-saving equipment requirements, we find that the absence of life-saving equipment drastically reduces the chances that the captain and crew members can survive in the harsh sea environment.

We believe that life-saving equipment necessary to effectively meet most uninspected occurrences at sea, fires, capsizings and founderings should be required on all uninspected commercial fishing vessels.

Senator CHAFEE. What were those two again, please?

Mr. NALL. The most unexpected occurrences at sea consist of fires, capsizings and founderings. Those were the three primary reasons for loss at sea. We are recommending bilge and fire alarms. Those are not part of Senate 849, but we feel that bilge alarms in areas where there can be flooding would make a considerable difference in terms of safety equipment. Inflatable life rafts, we've already covered, an operable emergency radio and EPIRBs.

We recognize that voluntary associations are making the difference and that some groups, the North Pacific group as well as The Point Club and others, have developed safety requirements. The states, some states are doing some things that may help on a voluntary basis. However, we feel that mandatory requirements will reach every vessel and every crew.

Efforts to improve the safety level of vessels in an association such as The Point Club have greatly enhanced safety, but these tend to exclude unsafe vessels. One of the things you have to think about is that if the requirements are mandated, then every vessel, regardless of safety objective and the safety attitudes of the captain or owner, must comply with those requirements; and the voluntary programs are very good and we would not in any way say anything negative about them. But the people who attend those are people who are already safety conscious anyway; and we feel that they're not the strong risks, they're not the ones, the operators who create the greatest risk. So we continue to stress the need for mandatory life-saving equipment requirements.

In conclusion, I'd like to note that the Safety Board will continue to investigate major fishing vessel casualties and report on the critical safety issues that are uncovered from our investigation. We are currently investigating the catastrophic losses of the uninspected commercial fishing vessel, the NORDFJORD, that occurred on September 19, 1987 and the fishing trawler/processor UYAK II, a loss on November 5, 1987.

These two casualties involve the loss of nine fishermen and fishing vessels valued in excess of $2.5 million. Additionally, the Safety Board is aware of the tragic loss out of Newport, Rhode Island, of the fishing vessel, Reliance, and we look forward to the Coast Guard's investigation and report on that casualty. We are in constant communication with the Coast Guard on the progress of their investigation in the RELIANCE accident.

This concludes my formal statement, Senator, and if you have other questions I would be glad to answer those.

[The statement follows:]

STATEMENT OF JOSEPH T. NALL, MEMBER, NATIONAL TRANSPORTATION SAFETY BOARD

Senator Chafee, the National Transportation Safety Board appreciates this opportunity to appear before you today to discuss S. 849, a bill to establish guidelines for compensation for injuries by seamen on fishing industry vessels and require safety regulation for such vessels. We are very pleased for your timely consideration of this important legislation and your untiring support for improved fishing vessel safety.

The Safety Board investigates all major marine accidents that occur on navigable waters of the United States and major marine accidents that involve U.S. merchant vessels in international waters and accidents involving U.S. public vessels and non-public vessels. Under joint regulations promulgated by the Board and the U.S. Coast Guard, the Coast Guard conducts the preliminary investigations of all marine accidents and notifies the Board if an accident is within its jurisdiction. The Safety Board then responds by conducting its own investigation, by participating in a joint investigation with the Coast Guard, or by requesting that the Coast Guard conduct an investigation for the Safety Board.

In all cases the Safety Board completes its own independent analysis of the accident and determination of probable cause or causes. As a result of its investigations, the Board directs safety recommendations to agencies such as the U.S. Coast Guard, the National Oceanic and Atmospheric Administration, fishing vessel companies and other maritime organizations.

In addition to accident investigations and issuing safety recommendations, the Safety Board undertakes studies that address safety issues developed through our accident investigations. Today, I would like to provide you with the recommendations arising out of our study, based on 203 accidents from 1978 to mid-1987 regarding the safety needs for the uninspected commercial fishing vessel industry.

The term "uninspected commercial fishing vessel" as used by the Safety Board denotes a vessel not subject to U.S. Coast Guard material inspection, certification and safety standards in such areas as hull, machinery, lifesaving and firefighting equipment, and navigational equipment. Additionally, the vessels generally are not required to have licensed personnel nor documented seamen and there are no manning requirements.

In 1986, there were approximately 100,000 commercial fishermen operating on 33,000 U.S. uninspected commercial fishing vessels. These fishermen participated in landing 60 billion pounds of fish valued at $2.8 billion. They risk their lives daily in a harsh and hostile environment that demands safe operating practices, solid training in safety measures and, in the event of an accident, adequate safety equipment in good working order.

Today, there is no requirement that commercial fishermen who work on U.S. uninspected commercial fishing vessels complete the training necessary to perform their jobs safely. Further, federal requirements for safety equipment applicable to uninspected commercial fishing vessels are inadequate.

The Safety Board believes that the components to improve the safety level of these vessels already exist in the Coast Guard's technical circular and the training courses. What we believe is needed is for the Coast Guard to: Establish training requirements for captains and crewmembers commensurate with their respective responsibilities. Establish licensing requirements, at a minimum for captains. Expand the basic lifesaving equipment requirements. Establish stability information requirements Vessel inspection to assure compliance.

Commercial Fishermen Training

On August 7, 1985 the U.S. inspected fishing vessel SEA DANCER, with four persons onboard, sank in Bristol Bay, Alaska. The seas were 16 to 20 feet high, and winds were 35 to 45 knots. The captain informed the Coast Guard and several nearby fishing vessels that the vessel was taking in water and needed assistance. One fishing vessel, the PEGGY SUE, reached the SEA DANCER and assisted in the rescue of the captain and two others. One person aboard the SEA DANCER was reluctant to enter the water even though she was in an exposure suit. She had not been trained in the proper use of such lifesaving equipment and, as the vessel sank, she remained aboard. The captain testified that he saw her appear and then quickly disappear. She has never been seen again. The Safety Board determined that contributing to the accident was the owners failure to ensure that the SEA DANCER's captain was adequately trained.

The Safety Board has addressed the need for training captains and crewmembers in a number of other catastrophic accident reports, including its report on the sinking of the SANTO ROSARIO, the loss of the AMAZING GRACE, the capsizing of the AMERICUS, and the disappearance of the ALTAIR. Other Safety Board reports, such as those on the sinking of the BONAVENTURE, the capsizing of the LIBERTY, and the sinking of the ATLANTIC MIST, highlighted the need for training in specific areas, such as watertight integrity.

The Safety Board has attempted to address the training issue in three ways: through the Coast Guard, through fishing vessel associations, and through individual fishing vessel companies.

Even though commercial fishing is a specialized and dangerous activity, with the potential for catastrophic consequences if tasks are performed incorrectly, there are no safety training requirements. Training is available from some proprietary fishing vessel organizations and some universities involved in fishing vessel safety.

The Safety Board is aware of two developments that could significantly improve commercial fishermen training: the training courses and "Vessel Safety Manual," prepared jointly by the Coast Guard and the North Pacific Fishing Vessel Owners' Association (NPFVOA), and the Coast Guard's Navigation and Inspection Circular 5-86, which provides technical information used in the Manual.

The NPFVOA's training courses cover fundamental safety concerns appropriate to uninspected commercial fishing vessel operations. However, these courses are voluntary. During two years, about 420 captains and crewmembers have attended the courses in the Seattle area. This is gratifying, but there are approximately 16,500 active fishermen to train in Washington

State alone. Mandating training for captains and crewmembers would accelerate attendance at such courses and would no doubt spark development of new private/public training centers.

The Coast Guard already has developed the framework for a mandatory national commercial fishing vessel training program by approving the "Vessel Safety Manual" and its accompanying training classes. The effort should now be accelerated to require training for all commercial fishermen and to develop training centers like NPFVOA's, which meets Coast Guard training criteria. To accomplish this effort, the Coast Guard should establish minimum safety training requirements.

Licensing

About 0430, on July 23, 1984, the 70.5-foot-long U.S. fishing vessel SANTO ROSARIO, while fishing about 35 nmi east of New Smyrna Beach, Florida, capsized and sank. Three crewmembers were rescued by a fishing vessel nearby, but the fourth, sleeping below deck, went down with the vessel and was drowned.

About November 24, 1984 the 86-foot-long, uninspected U.S. fishing vessel AMAZING GRACE sank about 80 nmi east of Cape Henlopen, Delaware; there probably were seven crewmembers aboard. The AMAZING GRACE has never been located, and the crewmembers are missing and presumed dead. A 16-day search by the Coast Guard turned up only one of the two liferafts from the vessel.

Both the crew of the AMAZING GRACE and the SANTO ROSARIO were typical of most fishing vessels. The captains had no formal training in vessel safety. Most captains simply serve as deckhand mates and as operators under other captains who also had very little formal training in stability, firefighting or use of lifesaving equipment.

Currently, there is very little if any incentive for a captain to seek training. The only measure of a captain's worth is his or her ability to locate and catch fish. There is no incentive to take time off work to attend training courses, seminars, or expositions that address safety.

Training and licensing of uninspected commercial fishing vessel captains go hand-in-hand. We believe there should be a federal requirement that a captain of an uninspected commercial fishing vessel have a license, and that the license can be issued only after meeting minimum safety qualifications. Most importantly, the captain should demonstrate that he or she meets these minimum qualifications by passing a written examination or oral examination on practical problems in vessel safety, including navigation/seamanship, rules of the road, vessel stability, firefighting, watertight integrity and the use of lifesaving equipment. In addition, the captain should demonstrate eligibility for the license through time in service to show proficiency in the skills required for commercial fishing operations.

The Safety Board believes that the Coast Guard is equipped to institute such a licensing program and has already undertaken such programs for other marine operations—for example, the licensing of operators of uninspected towing vessels. Such a licensing program would raise the safety level in commercial fishing vessel operations in several ways. First, the captain would be better prepared to handle an unexpected life-threatening emergency; second, the captain could disseminate valuable emergency instructions and provide drills on the safety features of the vessel for his crew prior to departure; third, the captain could impart navigation and seamanship skills to the crew; and finally, the training required for such a license could cause a greater appreciation of the need for the readiness of safety equipment and the periodic maintenance of that equipment.

Stability Requirements

Two tragic casualties focused attention on the problem of fishing vessel stability. About 0230 on February 14, 1983 the fishing vessel ALTAIR departed Dutch Harbor, Alaska for the crab fishing grounds near Pribilof Island in the Bering Sea. About 0330, the helmsman of another fishing vessel en route to Dutch Harbor saw the ALTAIR proceeding on a course toward Pribilof Island at about ten knots. About 0830, the fishing vessel AMERICUS, a sistership to the ALTAIR, departed Dutch Harbor for the same crab fishing grounds. Both the AMERICUS and the ALTAIR on departure were fully loaded with crab pots. About 1430 the capsized hull of the AMERICUS was sighted about 30 nmi north of Dutch Harbor. The ALTAIR was never seen again. The AMERICUS' seven crewmembers and the ALTAIR's seven crewmembers are missing and presumed dead. The value of the two vessels was estimated at $6.2 million.

The Safety Board concluded in the investigation of the ALTAIR and AMERICUS sinkings that the probable cause of the capsizings was the vessels' inadequate intact stability caused by improper loading and the addition of trawling gear. Contributing to the accidents was the owners' failure to determine the stability characteristics of the vessels and to amend the vessels' stability information after trawling gear was installed, and the captains' failure to comply with the provisions of the existing stability information.

There is a definite need for vessel stability tests and understandable stability information to be uniformly provided to captains of uninspected commercial fishing vessels. The Coast Guard recognizes this need in its voluntary navigation circular NVIC 5-86, which devotes considerable attention to stability. However, NVIC 5-86 provides only voluntary guidance and, therefore, cannot effectively address the stability issue.

In order to address stability in any meaningful fashion, stability testing for all uninspected commercial fishing vessels must be required. Additionally, any time a fishing vessel undergoes major structural alterations that shift the vessel's center of gravity, further stability tests should be required. In addition, stability characteristics and guidance on proper loading of an uninspected commercial fishing vessel must be provided to captains in a form they understand, and stability information must be kept on the vessel where the captain can easily find it.

Lifesaving Equipment Requirements

In many casualties, the absence of lifesaving equipment drastically reduced the changes that the captain and the crewmembers could survive in the harsh sea environment. The Safety Board believes that lifesaving equipment necessary to effectively meet most unexpected occurrences at sea—fires, capsizings, and founderings—should be required on all uninspected commercial fishing vessels. This includes exposure suits (in applicable waters), bilge and fire alarms, inflatable liferafts, an operable emeregncy radio, and emergency position indicating radio beacons. (The Congress has taken action on the need for EPIRBs and the Coast Guard's rulemaking was published in the Federal Register on September 3, 1987.)

As a result of our study we recommended that the Coast Guard undertake a number of actions to minimize and reduce the tragedies at sea involving uninspected commercial fishing vessels. A number of these safety recommendations require Congressional action. Most notably we recommended that the Coast Guard:

—Seek legislative authority to require the licensing of captains.

—Seek legislative authority to require stability tests be conducted and that complete stability information be provided to captains.

—Establish minimum safety training standards.

—Seek legislative authority to require basic lifesaving equipment including but not limited to: Exposure suits in applicable waters. Flooding detection alarms and automatic dewatering systems. Fire detection alarms and fixed firefighting systems for enginerooms. Liferafts to accommodate all persons onboard. Emergency radios with an independent power source.

—Establish standards for the implementation and use of the new 406 MHz emergency position indicating radiobeacon.

—Seek legislative authority to require that all uninspected commercial fishing vessels be certified and periodically inspected by the Coast Guard or its recognized representative to ensure that the vessels meet all applicable Federal safety standards.

—Include in the final rule on "Operation of a Vessel While Intoxicated" an absolute prohibition against the use of alcohol and/or drugs while engaged in commercial fishing operations.

The Safety Board believes that uninspected commercial fishing vessel safety can be effectively improved by these recommended actions. S. 849 addresses a number of these areas of concern in the section on safety standards.

The Safety Board strongly supports Congressional efforts to provide a minimum safety framework to improve uninspected commercial fishing vessel safety.

In conclusion, I would like to note that the Safety Board will continue to investigate major fishing vessel casualties and report on the critical safety issues that are uncovered from our investigations. Currently, the Safety Board is investigating the catastrophic losses of the U.S. uninspected commercial fishing vessels NORDFJORD of September 19, 1987 and the fish trawler/processor UYAK 11 loss of November 5, 1987. These two causalties alone involved the loss of nine fishermen and vessels valued in excess of $2.5 million. Additionally, the Safety Board is aware of the tragic loss of the F/V RELIANCE out of Newport, Rhode Island on or about November 12, 1987. We look forward to the U.S. Coast Guard's investigation and report on this casualty. We will be in constant communication with the U.S. Coast Guard on the progress of their investigation.

That completes my formal statement. I would be pleased to answer any questions you may have.

Senator CHAFEE. Yes. What happens in other countries, is this as dangerous an occupation in other countries? Let's take England, operating in the North Sea. That's dangerous. What's their record, and the Norwegians?

Mr. NALL. Senator, because of the nature of the resources that we were able to give to this study, primarily through the assistance of Mr. Gossard, we did not do a comparison of international data..

I can tell you, however that the United Kingdom in 1975, a dozen years ago, enacted for vessels of 12 meters and larger, substantially the same kinds of safety requirements that we're talking about here ;and they reported to a government agency of the United Kingdom last year in 1986, that in that period of time there was a decrease of 32 percent in vessel loss.

We feel that there is a direct relationship between the safety requirements and the number of losses. That shows us a significant history of reduction in one of our neighbors, the UK. The Norwegian government, as well as other Northern European governments, are concerned about safety requirements, but I cannot give you a statistical comparison.

Senator CHAFEE. Can you folks all hear in back? What would you do with this bill to make it better?

Mr. NALL. We would like to see the addition of bilge alarms. We think that that would assist the crew in knowing of problems early, being aware of problems before they become drastic. Fire alarms. If something as simple as a type of fire alarm that all of us have or should have in our homes were installed aboard the ships or aboard these vessels rather, we would see a significant reduction in the fires aboard the ships.

We would like to see licensing of captains for the reasons that we have stated, and that licensing process could be manyfold in various levels and stages depending on the distance from shore that they operate. We would like to see training given a lot more emphasis, not only with the regular crews but for the casual employ and part-time employee.

We would like to see simulation conducting drills. We have simulations of accidents in many other areas of transportation. We feel that simulation training in survival should be given to these crews, even if it were a day or two's course. A great deal can be taught to them in basic survival and first-aid on the seas.

Finally, we would like to see a stability review and a mandated requirement for stability information on all vessels, not just those manufactured after the effective date of the act. We would like to see stability information required of all existing fishing vessels which would mean a survey borne at the cost of the vessel owner itself.

Senator CHAFEE. Now, you know that presents great problems again on the Coast Guard manpower.

Mr. NALL. I don't think the Coast Guard has the manpower to do it, sir, certainly not without a great deal more budgeting than they have now. However, there is, as the Senator well knows, a substantial group of surveyors and architects whose expertise lies in that area.

Senator CHAFEE. And who would check to see that the vessel had the inspection?

Mr. NALL. Again, the Coast Guard would have to conduct spot audits or a percentage of safety checks. It could not look at all fleet. It could require the filing of the stability letters. That would require a minimum of manpower.

Senator CHAFEE. In your testimony you talk about two vessels leaving Dutch Harbor, both of them capsizing in the same day, I guess. Could you go over that.

Mr. NALL. On the same day in the same area.

Senator CHAFEE. Could you read that perhaps into the record starting at about 2:30 in the morning on February 14th.

Mr. NALL. At that time on February 14, 1983, the fishing vessel ALTAIR departed from Dutch Harbor, Alaska, for the crab-fishing grounds near Pribilof Island in the Bering Sea. About 3:30 A. M. the helmsman of another fishing vessel in route to Dutch Harbor saw the ALTAIR proceeding on a course toward Pribilof Island at about 10 knots.

At about 8:30 in the morning the fishing vessel AMERICUS, a sister ship to the ALTAIR, also departed Dutch Harbor for the same crab-fishing grounds. Both the AMERICUS and the ALTAIR on departure were fully loaded with crab pots. About 2:30 in the afternoon——

Senator CHAFEE. Of the same day?

Mr. NALL. Of the next—during the day of the same day, the capsized hull of the AMERICUS was sighted at about 30 nautical miles north of Dutch Harbor. The ALTAIR was never seen again. The AMERICUS' seven crew members and the ALTAIR'S seven crew members are missing and presumed dead. The value of the two vessels was estimated at $6.2 million.

The Safety Board concluded in the investigation of the ALTAIR and the AMERICUS sinking that the probable cause of the capsizing was the vessel's inadequate intact stability caused by improper loading and the addition of trawling gear. Contributing to the accident was the owner's failure to determine the stability characteristics of the vessels and to amend the vessel's stability information after this trawling gear was installed and also the captain's failure to comply with the provisions of the existing stability information.

Senator CHAFEE. So there were 14 men lost in the same day in the exact same area?

Mr. NALL. That's correct, and as the Senator recalls, these were substantially altered vessels that were originally designed for one purpose. Then trawling gear was installed later without any supervision by any state or federal agency as to the stability results occurring from those changes and alterations.

Senator CHAFEE. Now, I think it would be of great comfort to the families of the RELIANCE if your organization were good enough to investigate that accident. Could you do that?

Mr. NALL. Senator, we are working daily. I talked on last Friday with Mr. Lou Colucciello, the head of our marine division. We are looking carefully at those facts and at those circumstances, and if we can possibly include that within our manpower, we will The Senator knows, and I think it important for the public generally to realize, that the Safety Boards employees include only 325 warm bodies nationwide in 10 field offices and in Washington.

So given the limitations of resources and given the other accidents that we are now actively engaged in, we will do our best to attempt to determine the cause of the RELIANCE sinking. The vessel has been located. The Senator is well aware of that. Some initial findings have been made by the Coast Guard. We will attempt to investigate that again given the resources. We will do our best.

Senator CHAFEE. Yes. There's a firm belief that it was hit by another ship in those shipping lanes where it was.

All right. Mr. Nall, thank you very much. I appreciate you and your associates being here.

Mr. NALL. Thank you.

Senator CHAFEE. Mr. Jim McCauley, president, Point Judith Cooperative Association. Okay. Mr. McCauley, you're the man who knows the local area, and you've been mentioned several times favorably, so why don't you go to it.

STATEMENT OF JAMES McCAULEY, PRESIDENT, POINT JUDITH FISHERMEN'S COOPERATIVE ASSOCIATION, INC.

Mr. McCAULEY. I am president and manager of the Point Judith Fishermen's Cooperative and The Point Club which is a self-insurance company. You can well appreciate it's an elected position in both cases, so that puts me in a very tenuous position.

Senator CHAFEE. Well, I'd like to see you reelected, Mr. McCauley. I believe in reelection of individuals.

Mr. McCAULEY. I was a fisherman for 28 years basically in the offshore dragging. I have been working in offshore lobstering as well. I continue to have an ownership in an 85-foot steel stern trawler which happens to be named the ALLIANCE which was kind of a scary situation when you hear something on the radio or television to make sure you've got the name correct when your vessel is also out in the same kind of weather.

In 28 years, Senator, I have many times encountered some serious circumstances on the water. I don't believe there's very many people in our cooperative or our Point Club that have been at sea for any length of time that have not had some close calls.

Senator CHAFEE. Can people hear in the back? Is that not on at all?

Mr. McCAULEY. I've got a cold coming on today so I'll try a little louder. As I say, most of us have experienced some kind of actual casualty. I was involved in my early days in one that—a 72-foot shrimp vessel that I was a crew member on was cut in half by a freighter, and we managed to survive that one. Several occasions I was out in over 100 miles an hour on my own vessels in which any one could have been a disaster, so this is part of the business, and I don't think we can get away from that point of view.

It does happen.

None of which—none of the things I happened to mention I think were necessarily correctable. They are something we try to avoid but it does happen. The point in testifying today on—we're really testifying on behalf of The Point Club which is a self-insurance organization, presently insures 62 fishing vessels, primarily draggers.

We have two—at this time we have two offshore lobster boats and these vessels are from Connecticut to Rhode Island primarily, Massachusetts and some from Maine.

We got into this whole thing because we really didn't have what I would call effective insurance. We played no part in how that insurance was being carried out or the management of that insurance which of course the position we're in we were very concerned about. We are basically fishermen-owned vessels. Those are the people we have in our organization.

When someone asked me the question, do you represent fishermen, I say, yes, I do, only from the point of view that in our society, fishing society is what I call it here in Point Judith, we're pretty close. Most of the boats are owner operators. The captain is part of the crew in the sense he works on deck right alongside everyone else. He's a friend of those crew members.

And the treatment that some of the insurance companies historically have given crew members was something that we couldn't abide by. So we went on our own and decided we would have our own insurance company representing our own crew members to make sure that they got a fair shake. I think we're doing that job.

Senator CHAFEE. Are you self-insured or do you contract with an insurance company?

Mr. McCAULEY. We have reinsurance. We, however, make all the arrangements as to who is in the club, all the regulations pertaining to that, the membership in the club, and as far as that goes, this is according to the vessel qualifications and everything like that; and also we take an 21 active participation in the claims management.

Senator CHAFEE. So one of your members would pay a premium to you, to the club, and the club then invests that, or does the club then reinsure with another organization?

Mr. McCAULEY. Well, at this point we take a part of the liability insurance, that's our risk, and then from on top of that we will take reinsurance and take certain parts of that risk with the intention that as we accumulate more funds and invest those funds properly, we will be able to eventually take a bigger and bigger part of that and retain more and more of the actual premiums.

Senator CHAFEE. And, in effect, you would be a mutual insurance company?

Mr. McCAULEY. In effect, we are right now. Many mutuals even do reinsure through various agencies. There are higher levels of insurance like the million dollars range is with Lloyds of London. This is not unusual, and most insurance companies are done that way. So the management of it is very critical that you do it correctly and know the people you're working with. We're not open to just everyone. The insurance companies that have taken those on knew that.

We had a group for 31 years that was with one insurance company so they had—we had a track record, so they were able to take that track record and convert it into a self-insurance and know that historically if we do the same as what we've done in the past, that they should be home free on this one and they would take the risk, and that's why we took the risk as well.

However, now our management is a lot better and we are addressing the problems of the crew members which I believe you are addressing here in this bill. Some of the circumstances as far as maintenance, the levels of maintenance and things, I think are absolutely essential.

I'd like to make one comment on this bill that I've heard other people testify today. I think it's time we got one of these bills passed. I wouldn't try to keep changing too many things or addressing too many other issues.

It cannot be all-encompassing. I think it's time that you took this bill and got it through the legislation and get it passed so that we have a starting place. In this bill is the place for a committee, a national committee.

It's that national committee, I believe, that can step in and address future legislation. This is going to be an ongoing process.

Senator CHAFEE. It's better to settle for a half a loaf, you say, and get it rather than striving for—and I'm not arguing with you. I think this is quite common. This is what legislation is all about. But you say, don't try to get too much, just get a bill passed and build on that?

Mr. McCAULEY. Exactly. I think even the Coast Guard has come out with some problems with licensing, for example. We all recognize, yes, it would be good to have licensing, but if it's going to hold up this bill, if it's going to change the opinions of Congress in the passage of this bill or in fact the idea of the cap last year of $500,000 which happened to defeat the bill, Professor Nixon has come out and said, we can live without that cap.

It's still a good bill as it stands. It will address a lot of issues and it does address a lot of issues. I think it makes this bill, an actual fact, makes an insurance company take a second look at the fishing industry. It specifies enough so that there's some grounds for taking a good look at it.

The worst thing in some cases, and one of the purposes of this bill is to encourage insurance companies to look at the fishing industry, to give us a better shape, to do more for us; but in actual effect, you start in the very first statement saying it's the most dangerous occupation in the United States.

If I were on the insurance end of the thing, I would automatically bow to that one and find some other thing to insure; but, nevertheless, we do have a serious problem and I think that some of the things we're doing here in our own club have given us some insight as to what some of the corrections can be.

I'd like to address some of the specifics of this bill, Senator. In particular, I strongly recommend only one change, and that would be the change from the 80 percent to a 66-2/3. I said I do represent fishermen, and I still feel I can say that. I am in agreement with the $30-a-day minimum, but I don't think that we should consider the possibility that any employee or any crew members or anyone else that's insured should end up with the possibility of receiving more tax-free dollars than what their income was previous to that. That is a possibility within the 80 percent situation.

I think you're trying to encourage people to go back to work and not to end up in some kind of a permanent welfare state. I think that most of our people and our—as long as the issue of their compensation is real, it addresses their needs, they're willing to go along with that and not worry about lawsuits and all the rest of it, that is our experience, as long as you can maintain the people at the level that they are used to living at.

And you can't expect it to be anything else but that. You have to recognize that fishermen throughout this United States, and there may be some groups that have low incomes, but the average I would say, depending on the region and the kind of fishery, may range anywhere from $20,000 a year to $100,000 a year.

Senator CHAFEE. When you say fishermen, you're talking crew members?

Mr. McCAULEY. Crew members, that's right. It's conceivable you can run into those kind of wage levels. To guarantee an 80 percent wage level like that may be prohibited. It represents a real——

Senator CHAFEE. What do you think the average income is? Of course average is a dangerous word.

Mr. McCAULEY. That's right. I really hate to refer to it because each vessel category may have an average, but in Rhode Island, you're probably looking somewhere between 20 and 40 and some, of course, much greater than that. That's just my guess.

Senator CHAFEE. Sure.

Mr. McCAULEY. But as I say, unless that maintenance fee is enough to maintain that person, he is going to look to a possible suit. The temporary injury situation that's included in this bill, this allows that. I was very pleased to see, though, that in that there is a penalty to the insurer that in the event they don't provide maintenance and cure, then they are subject to suit and the full recourse of the courts.

I think that you have to make sure that the crewman is treated properly, and I think that the provision you have in this bill, at least at that level of compensation, will guarantee that. It's very important that we have that kind of a relationship. I think you heard the question earlier, and it is disturbing to me that there are only a certain number of vessels that are actually insured at all.

Senator CHAFEE. I'd like to ask you about that statistic. What do you think of the vessels that—well, take just the ones that deal with your co-op. What percentage of them do you think are insured?

Mr. McCauley. I would say almost all. I can only think of possibly one or two that are not, but those that are not usually are the family situation where they have maybe the captain and his wife, for instance, may be fishing on the boat, on the very limited circumstance.

I don't know whether I mentioned it before, but the insurance levels today, the premiums are exceptionally high. My vessel today, the insurance premium is equal—the annual insurance premium is equal to what I paid for my first vessel which happened to be an 80-footer when I bought it back in the 1960s, so that's the kind of costs we're looking at.

Senator Chafee. And that's even as a member of your Point group; is that right?

Mr. McCauley. That's right. That's the level of premiums. Even though we have very good rates, that's still the level we're at.

Senator Chafee. Would there be a dividend like most mutuals, or aren't you into that?

Mr. McCauley. As the club grows and as the investments increase, that will come about. That's our plan obviously.

There are some in the North Pacific that have been in existence for quite some time, and they have had excellent results, and actually their premiums on Pmi are nonexistent because of the reinvestment, so they're able to carry that out.

Senator Chafee. Have you found, in your group, the club, The Point Club, do you follow the requirements that this legislation—I mean do you have training, do you have wet suits, do you have the radio identification beacon equipment and life rafts? What do you mandate for the vessels that belong to your club?

Mr. McCauley. Actually, Senator, we have 94 specific items which were in fact mentioned in the National Transportation Safety Board review, and they've been mentioned specifically in The Point Club, but we have 94 items that we require a vessel to have. We're talking about vessels mostly between 60 and 95 feet. These 94——

Senator Chafee. Are crew members of what, three or four?

Mr. McCauley. Three or four mostly, and these requirements are far in excess of what your legislation is requiring. They go into great depth as to actually the structure of the vessel, whether it's the height of the hatch combings, things of that nature, very specific, the kind of windows that are in the vessel.

Senator Chafee. Stability?

Mr. McCauley. Yes, stability is also included.

However, the stability issue is—right now we're concentrating really on new vessels and also those vessels would have tanks. They've refrigerated sea water because they're actually carrying water within their holds which are one of the more dangerous things a vessel can do, and we recognize that so we've concentrated on that. We're a new club. We've only been in existence a year ago June so we're really picking apart those areas which we feel are most critical.

As far as training is concerned, we've just recently and in fact in November of—this past November——

Senator CHAFEE. You mean last month?

Mr. MCCAULEY. Yes. We instituted a program with the University of Rhode Island fishery school and run by their staff. It was a three-day session. We had the first—the first class had 10 crewmen and captains go through it similar to what the North Pacific Vessels Group has done.

The first day was safety procedures which included actual boardings on the rafts, donning the suits under certain circumstances. It all took place in Wickford Harbor.

The second day they did the medical at sea which is very extensive, just how to handle certain cases, a limited amount of CPR; but it was actually designed for trauma-type cases.

On the third day they did fire-fighting and they actually had the opportunity to put out fires at an installation over in Jamestown, and they were able to use all the various types of fire extinguishers.

Those that went through the class turned out to be real disciples of the program coming back and saying how great it was to experience the hands-on use of the various types of equipment, especially the actual experience of doing this kind of thing as you experienced yourself. It's not an easy thing to do.

Senator CHAFEE. It's harder to get into than I thought.

Mr. MCCAULEY. But, nevertheless, this is what we plan on having for all our people. At this time it's a voluntary program; however, we're looking at the possibility of how far it can go. It's pretty hard to get somebody that's definitely negative on a program to get into the whole thing, though. You really have to want to participate and sometimes——

Senator CHAFEE. Can't you make a requirement or don't you have that much leverage yet?

Mr. MCCAULEY. That's really what it amounts to, Senator. We really have a problem with leverage in all cases. I think the captains are looking at some of their crew members and the shortage of crew members. There's not necessarily an overabundance of crew members available these days, and I think this is true in many ports, but you can influence them; and that's one of the strengths I think we have in this area that we've been able to use, peer pressure, whatever, to get things done.

I think we'll get this program done. This was a first try. I think it was a successful try, and we're very encouraged by the results, and now that we've run those few people by, I think that they'll all agree that we'll be able to get most of those people through that course in a very short order. That was kind of a trial run. We didn't want to run too many through it until we found out what problems there might be in the training of it.

Senator CHAFEE. Do you have bilge alarm requirements?

Mr. MCCAULEY. Very definitely. A bilge alarm in each compartment is a definite requirement. In fact, we have held up on insurance and put vessels on port risk so that they could not sail, if we took them into the program and found out on that first survey that they were not adequately covered under the alarm systems that we require. I will say that about insurance.

And we've experienced this, if in the event a vessel does not comply or is unable to meet our requirements for any reason or has exceptionally bad experience for whatever causes or reasons, and we do decide—the big event is to cancel that insurance, it's a very difficult position for me and the other members of my board of directors to make that decision because actually in fact you most of the time are putting those people out of business.

If they have a mortgage, they are required to have insurance. That's required by the bank, and in the event that their insurance is cancelled, it's very doubtful that they could find insurance elsewhere.

There is no catch-all type of insurance program that's mandated, so this is one of the criteria of most insurance companies. I ask the question, have you ever had your insurance canceled. If the answer is yes, it's very unlikely you would be able to get insurance at this present day and age.

Senator CHAFEE. But it seemed to me that therefore there would be a high incentive for the people to meet your requirements, bilge alarms or wet suits or whatever, but sometimes you cancel not because of physical characteristics or equipment of a vessel but because of the crew or the skipper or something?

Mr. MCCAULEY. That's possible, but it's generally considered to be an unseaworthy condition of one kind or another, that we determine it to be an unseaworthy condition; and usually in almost every case that I can recall, we've had the person in to express our opinion, our views. They've been given every opportunity to correct any situation we see happening. It's very, very critical of us, I know, to be able to do this, but we have the risk of all our other members at interest.

Senator CHAFEE. How's your accident rate been?

Mr. MCCAULEY. It's been very good to date. We always worry about that because we hate to make that statement, but we've had very good results. I think everyone has approached the whole issue on a different level, the fact that their neighbor, the person on the other side of the dock is involved in this, they're at risk. They don't take some of the chances maybe they did previously.

They're more cautious about all issues. The particular issue addressed in the transportation board, for example, on drugs and alcohol, is a big issue that we've addressed prohibiting it on the vessels. There's a sign to that effect that it's on the vessels. We're very critical about that. We look to see that they police each other in that particular issue. There's no place at sea for that kind of activity, and it's very strongly discouraged and obviously we have some leverage over the owners that have this insurance, and we really push on those particular issues.

Senator CHAFEE. Do you have a waiting list of those who would like to join up with you?

Mr. MCCAULEY. Well, it's kind of by invitation more than anything, yes.

Senator CHAFEE. I must say if one of my children were going to sea, I would kind of like them to go on one of your vessels.

Mr. McCAULEY. I appreciate that, and that's actually what we intended. We're trying to build a good reputation of safe boats. I think it's the way to go. But it's not opened to everyone. There are certain classifications of vessels that are at sea now that you probably could say are uninsurable. We wouldn't want to take the risk. If some day there's no-fault insurance, that's another case, but we don't have that situation.

Senator CHAFEE. What now, putting on your hat, as representing the crewmen, what do you think of the—what do you think of the limitation and collection for a temporary injury, in other words, the bill, the legislation?

Mr. McCAULEY. The temporary injury aspects of it I think are very reasonable. I think realistically we are going to be able to get to the heart of the problem which is really the cost of medical bills and so forth, get that taken care of and get the maintenance programs started off very quickly. This is what our whole approach is to handling a claim.

We've probably got the reputation in town of paying our doctors and hospital bills faster than any other entity in the state. We believe in that, and as far as our crew members, that situation as soon as an accident takes place, we have someone that meets with them, talks to them, see what their needs are.

As soon as we can, we establish what maintenance level, in other words, what their pay has been, what level they're looking for, and we try to accommodate a level similar to what you have here in the bill. We actually operate under those basic assumptions that you've got here, the 66-2/3 and things of that nature, come very, very close to matching these.

Senator CHAFEE. And you found that the crewmen like to appreciate this, they get paid quickly, it's settled, they don't have to go to a lawyer, they don't have to sue, they like that?

Mr. McCAULEY. For the most part, that's the way it has been. We would hope that down the road that's the way it will continue to be. We would never—this area in Point Judith was never that strong on suits against the vessel owners anyway. I can't recall too many instances like that, unless it was through pure neglect of the insuring company, and we did have a few incidents like that which is one of the reasons we ended up with self-insurance. You have to address the person's needs. I'm certainly sure if I had a mortgage and a family to feed, I would want my needs addressed, and that's the way we approach it.

Senator CHAFEE. Promptly, too?

Mr. McCAULEY. Promptly.

Senator CHAFEE. One of the—somebody spoke to me the other day about—this is a general question, not tied in with your particular activities, that if a vessel is lost and just never shows up, never bodies found, that there's a tremendous difficulty in collecting for the death of that individual. Let's say the vessel is insured. Is that true? And what happens in those instances, do you have any familiarity with that?

Mr. McCAULEY. Not too much. I do know there's a period of time or period of waiting that——

Senator CHAFEE. It's quite substantial, isn't it?

Mr. McCAULEY. It is.

Senator CHAFEE. Could it be 18 months somebody said, something like that?

Mr. McCAULEY. I think it is quite a long period of time. I'm not sure of that answer.

Senator CHAFEE. Do you use equipment similar to this, your folks?

Mr. McCAULEY. Well, most of our vessels are offshore vessels outside of 20 miles so they usually have a canopy and so forth. Mr. Switlik supplies that kind of a raft as well. This is more of an inshore type of raft.

Senator CHAFEE. Is that a wet suit similar to what your folks have?

Mr. McCAULEY. The same, yes.

Senator CHAFEE. And you would have one for each crew member?

Mr. McCAULEY. That's right, that's right. In some cases the crew member—I've heard of this. We don't do it on my particular vessel—but in some cases the crewman owns his own. That may be worthwhile. At least he's familiar with what his equipment is and maintains it himself.

Senator CHAFEE. It's like looking at your own parachute, you give it high attention?

Mr. McCAULEY. Exactly. It's not always true that the boat supplies the equipment because it depends on how much the person values his life, and that goes along with, I think, the voluntary training aspects of this and everything. When you go, you have to know what you're getting into. It's not easy.

Senator CHAFEE. Is there a down period that is better for training in the wintertime, can you get these fellows more?

Mr. McCAULEY. Not really. I would say that in Point Judith the best money is made during the winter months which 89 is probably why we worry about the winter months. The fish prices are higher, the risk is greater, the rewards are also greater. It's one of the reasons we have so much trouble during the winter months.

Senator CHAFEE. Okay. Two other questions, what do you think about licensing of captains?

Mr. McCAULEY. I think the licensing issue at this point is much too complicated to get into. I think that issue should be left for the committee to look at. I think it ultimately we may get there but not now. I think it clouds this bill.

Senator CHAFEE. What about mandatory training of the crew?

Mr. McCAULEY. I think the same is true there. I believe that some of the programs that we're doing on a voluntary basis can possibly be offered under some kind of an umbrella later on. Again, it might stall this bill. I believe that that can be addressed as well by the committee to see what future legislation, the degree of difficulty, where the money is going to come from, how it would be funded. None of those questions are obvious at this point. I wouldn't want to have anyone even consider holding this up based on those problems.

Senator CHAFEE. Now the inspection. It greatly appeals to me having the insurance, your situation, where you folks are all in it together and thus you're very anxious that anybody who belongs to this entity is a safe vessel because it affects you, your premiums, your vessels, your costs. ~~So~~ I like that. But what are we going to do about vessels that don't belong, and how are we going to have some kind of inspection on them and who would do it?

Mr. MCCAULEY. Well, I think what we've got here today is kind of the minimum. I think these items that we've got in the safety requirement part of the bill really address the marginal operator, almost that person that's close to being a violator in a sense of regulation. You have to force that person to do what is right and reasonable. I think you find that in many areas, but in this particular case, we're talking about the possibility of loss of life.

I think this is a start.

Senator CHAFEE. And who would do the inspection, do you think?

Mr. MCCAULEY. In this particular case, of course, I think we're talking about Coast Guard boarding and enforcement. I don't think that we should ignore the fact that the Coast Guard is quite effective right now. I can give you a for instance. I was boarded once not—maybe it was several years ago, and my numbers were on the side of the vessel when I had just started painting it, and they were not there, and I was boarded; and the captain of the Coast Guard vessel stated unless I had those letters in the appropriate size and the total markings on that vessel, he'd consider boarding me every day until such time I decided to go in and get that addressed.

He says, at the same time, it would be a good idea if you got everything else that you might be missing in your vessel requirements. As it turns out, I really only had one thing, and that was a horn that was not working properly at that time which it had been but for some reason it wasn't.

I went in and I called my local Coast Guard here in Point Judith after I made the appropriate changes I was required to do. They came down, checked everything out again, give me a clean bill of health, and it went in as part of the record. I didn't see anything wrong with that kind of procedure, if you could do something like that. It's easier, though, for the local Coast Guard personnel to board the vessel while the vessel is at the dock to review some of the problems and look over their safety devices rather than an at-sea boarding which is a much more costly venture, and I believe that they're capable of doing and can do that and will do that, and in our case have done it. So I think there's a lot more effectiveness there than we're hearing about.

Senator CHAFEE. Of course, our situation is a little simpler because our vessels tend to congregate in a few places, but you listen to those Senators from Alaska and it is true. I mean just a bit of trivial information. I think Alaska encompasses something like five time zones. I mean it's a big state. I may be wrong on that, but, anyway, it's tremendous and so they're just getting the Coast Guard to come in their situation is very, very difficult because they're scattered so.

Well, you've been very, very helpful. We sure appreciate it. You're really speaking from somebody who has got vast experience and also an organization that's doing something about this.

Do you want to discuss the RELIANCE incident just briefly? It's your thought that it probably was hit by another vessel in the——

Mr. McCauley. I was asked that question. It is in a place where that could happen. I think that was my answer. It's the bearings that we have for that where we think that vessel is, and I think that's quite certain and is probably true. I know fishermen who work in that area if they find a new wrecker, that's probably it because we know every wrecker that's down there; and that is in the shipping lanes and under the conditions like you would encounter in 70 mile an hour winds. It's very difficult, almost impossible, to pick up a small vessel in a 60-foot range by a larger vessel because of sea return and other problems caused by rain and things like that.

Radar is quite ineffective on small targets under those conditions. However, we can't ignore the fact that it was serious wind conditions, and there's always that other possibility. I don't think, unless that vessel is inspected on the bottom and viewed, you would be able to make that determination properly.

Senator Chafee. What about on the RELIANCE looking at their radar, wouldn't they be able to pick up a larger vessel?

Mr. McCauley. Yes, they would pick up the larger vessel for sure, but that's assuming that everything is operating properly at the time. It's not always that easy to avoid under those weather conditions. You're not that mobile. There are times that I've been out in excessive weather conditions like that that I really had a limited amount of ability to move around. It's not easy even to turn around, you know, on high seas without exposing your sides and so forth to taking heavy seas aboard. So you can't really judge what their reaction might be if there was something like that taking place. Speculation on this one is very difficult.

[The statement follows:]

STATEMENT OF JAMES A. McCAULEY, PRESIDENT, THE POINT CLUB AND POINT JUDITH FISHERMEN'S COOPERATIVE ASSN., INC.

Good morning Mr. Chairman and members. Thank you for the opportunity to comment on the provisions in S. 849. I am James A. McCauley, President and General Manager of the Point Judith Fishermen's Cooperative Association, Inc. and President of the Point Club, a self-insurance company formed in June of 1986. I was an offshore lobster and finfish fisherman, captain, and boat owner for twenty-eight years prior to assuming my present duties. I continue to have ownership in an 85 foot steel stern trawler.

I am testifying today on behalf of the Point Club. The Club presently insures 62 fishing vessels, primarily draggers, and a few large lobster boats. The Club now insures vessels in Connecticut, Rhode Island, Massachusetts and Maine.

The Point Club insures fishermen owned vessels implying a hands-on knowledgeable and actively participating owner. In addition, crewmen on our vessels are usually considered friends due to the close working environment with the captain who is in most cases the owner. Because of this relationship, the board of Directors of the Point Club pay particular attention to the well being and needs of our crewmen.

Temporary Injury: Sec. 101

A high percentage of our personal injuries aboard Point Club vessels fall into the temporary category. Avoiding a civil action over a temporary injury class of injury as stipulated in the bill offers an insurance company the opportunity to minimize of eliminate the high costs of investigative fees, court costs, legal fees, and the costs incurred through delays in agreeing on a settlement.

The most important service we can provide to an injured seaman is to cover his medical costs and guarantee an equitable wage until he is ready to return to work.

I strongly recommend a 66 2/3 percent of the wage or share over the 80 percent proposed in the bill. I am in agreement with the $30 each day minimum.

The 80 percent level is unreasonable if you consider the wage scale of many of our fishermen. Depending on the region and the fishery, a crewman's annual wage many range from $20,000 up to $100,000. In any case, the maintenance schedule of payment should not exceed the after tax wage. The 66 2/3 percent level would also be consistent with other industry levels of maintenance.

The maintenance fee must be high enough to maintain the injured seaman in the manner and life style to which he is accustomed as determined by his past earning record.

I was pleased that the bill provides for the insurer to lose the benefit of the temporary injury clause if the maintenance and cure requirements were not met.

I fully support the two year statute of limitation provision of the bill. The "tail" of any insurance claim causes insurance costs to escalate due to unresolved cases being reserved. Subsequent years premiums are based on reserved amounts which are usually higher than the final settlement. Establishing a shorter time frame requirement should improve the climate for marine insurers.

Title II Sec. 201 Fishing Industry Vessel Safety Requirements

I support the safety provisions in S. 849. In my opinion the requirements mandated here are standard equipment on most good vessels. It is unfortunate that the committee is required to legislate safety measure which are aimed primarily at marginal operators?

Our own "Club" has a list of 94 items in addition to the specific marine surveyors recommendations for each vessel. Some of our requirements were referenced in the safety study carried out by the National Transportation Safety Board. Our standards are too complex to be incorporated in legislation, but high standards must be achieved if there is going to be a significant reversal in fishing related losses.

Stability

The Point Club requirements on stability issues concentrate on "tanked" vessels using refrigerated sea water (RSW), new construction, major alterations of structure, or use of new gear which might contribute to stability problems. Although our concerns parallel that of S. 849, implementation and interpretation of the findings of the stability tests are still being evaluated by our Board of Directors.

Termination of Unsafe Operations.—Terminating an unsafe operation has the potential to prevent certain kinds of losses, but this provision should not be considered a sure cure. Many potentially unsafe maneuvers are temporary and unintentional. Most are brought on by unusual conditions: weather, temporarily increased traffic, heavy concentrations of fish causing deck loading, or limited fishing opportunities requiring fishing activities in untried areas.

Commercial Fishing Industry Vessel Advisory Committee

In my opinion, the Advisory Committee has merit in that safety legislation will not end with the passage of this bill. Many of the concerns and recommendations of the National Transportation Safety Board have yet to be incorporated in legislation. Specifically, the licensing issue requires a great deal of evaluation which could be a charge of the committee. To be effective, the committee may have to be structured by region.

Licensing

I have opposed a licensing provision in the safety legislation. Legislating sound seamanship and sound judgement is questionable. Testing cannot take the place of at sea experience. Those of us in the fishing industry that are committed to entities like the Point Club work continuously to increase the level of knowledge and professionalism or our captains and crews through voluntary programs.

Crew Training

The Point Club adopted the North Pacific Fishing Vessel Association's (NPFVOA) safety manual as soon as it became available. Each captain is encouraged to study and understand the safety procedures and requirements described in the manual. He, in turn, provides his crew with the opportunity to become proficient in the subject matter covered in the manual.

Our "Club" started a voluntary hands on training program with the University of Rhode Island School of Fisheries in November of this year. The courses, taught by the URI staff, cover three days of classroom and practical lab experience in safety equipment and survival procedures, firefighting and control, and providing for medical emergencies at sea.

Our directors did not consider a mandatory program. The captains and crewmen must want to take part in training programs requiring active physical participation.

Senator CHAFEE. Well, I want to thank you, Mr. McCauley, and everyone else. I just want to say I'm dedicated to geting this legislation passed, and I know that Dr. Nixon had a discouraging experience last year. But I'm going to plunge on. In the House they did get it out of the subcommittees, as you know. Now, of course, they got it out of the subcommittee last time, too. They got it out of the full committee and they got it out of the floor; but I'm much more optimistic that we now deal with the temporary injuries, and it's true that the bulk of the opposition, not the bulk, the opposition comes from the trial lawyers, and I just hope we can overcome their opposition and get this passed because of the facts that each of you have mentioned and the tragedies that we see and Ms. Defrances' testimony and Peggy Barry's and others. So we're going to do the very best we can. That concludes the hearing.

[Whereupon, at 12:40 P.M., the hearing was adjourned.]

[The following information was subsequently received for the record:]

6320 Marine View Drive NE, Tacoma, WA, November 28,1987.

Dear Peggy

My wife, Maxine, and myself are deeply appreciative of the work you, Bob and others are doing to press for legislation dealing with conditions of safety on board commercial fishing vessels.

As you know, our son, Greg, was lost at sea off Kodiak Island, November 5, 19B7, while on board the F.V. Uyak 11. There were three other lives lost in this accident and two survivors.

Maxine and I spent sufficient time with the Marine Safety Detachment, U.S. Coast Guard, Kodiak (Lt. Sam Bromley) and the National Transportation Safety Board, WASHington, D.C. (Chester Szychlinski), both of whom investigated the sinking of the Uyak II, and also with the two survivors of the accident, the Skipper (Brian Van Velkenburgh) and a deckhand (Brad Talbot), to be given the following information:

1. The Uyak II, a boat of 112 feet (or 130 feet, depending on the standard used for measurin?), in a calm sea, went from an upright to an upside-down position in less than one minute.

2. The ultimate factor which caused the accident was a flooded lazerette. Concerning the lazerette, we were told it was flooding with water and being pumped several times each day: that the warning system on the lazerette had been disconnected on a previous sailing; that the engineer, who perished in the sinking, had requested a new alarm system but was refused; and that the Skipper of the vessel was unaware the lazerette was being pumped several times daily, and unaware the alarm system had been disconnected.

3. We were told other factors which had impact on the accident were:

A. Structural changes were made to the vessel without a stability test. These structural changes included changes being made to the position of the trawl winches; changes made to the reel (gantry); and the out-riggers had been cut off.

B. The twin engine vessel had one engine out at the time of the accident. Concerning this malfunction we were told the boat had a history of both fuel system and engine problems, and one possible explanation given for this was some of the fuel tanks had formerly been sea-water balast tanks.

4. Concerning poor safety conditions on board the Uyak 11, we were told:

A. The escape hatch in the crews quarters (where Greg kept his personal survival suit) was covered in plastic and dog-wedged in, making it impossible to open by hand.

B. The fish hold covers could not be bolted down to be water tight.

C. The first life raft reached by the survivors was upside down and not properly inflated. When the survivors pulled a rope on the life raft in an attempt to upright it, the rope tore the liferaft and it was thus inoperable.

My wife and I know that fishing in Alaska is dangerous. Our son, who had been a commercial fisherman out of Kodiak since 1979, also knew of the danger. As a result, he had his own survival suit on board, and according to the Skipper of the Evie, for whom he had worked for several years, was a very safety conscious fisherman. And yet his life was lost, we believe because of a lack of safety conditions on the boat, which conditions he was (1) unaware, or 12) unaware until the vessel actually sailed, but then it was too late.

We know there is no way we can bring our only son back to life again, but we also know we must do something so that the lives of other fishermen will not be so needlessly lost. We know accidents can occur, but we overwhelmingly believe this accident would never have occurred if even basic safety measures on board had been met by those responsible for this vessel.

We are thus joining you, insisting from our legislators, laws which will govern the safety of commercial fishing vessels. There must be licensing of vessels, owners and Skippers. It must become unlawful for a boat to have structural changes without a certificate of stability. Every boat must be periodically, stringently checked to ensure basic safety measures such as life preservers (survival suits in Alaskan waters), operable life rafts; adequate, working alarm systems; and properly functioning machinery and equipment, including the engines.

I hold or have held both and aircraft pilot license and an automobile drivers license. By law I am responsible for both the vehicles of transportation I own or use, and for my actions as I use them? In similar manner, both the owners and Skippers of commercial fishing vessels must be made responsible by law concerning both their vessels and their actions. Anything less, concerning aircraft and automobiles has been accepted as immoral and antisocial. We believe it is time to enforce similar standard upon the ownership and operation of fishing vessels. We will persist in insisting for such laws from our legislators.

Thanks again for the work you are doing in this area and especially for the support you have given us in this time of deep grief. Our prayers are for you.

With a thankful heart,

Don Klingenberg.

Statement of Peggy Barry

My name is Peggy Barry, and I am grateful for the opportunity to appear before this group.

Our involvement in fishing vessel safety began in the summer of 1985. Our son Peter, a junior in college, died that August when the *Western Sea*, a 70-year-old wooden purse-seiner on which he had a summer job, sank near Kodiak, Alaska. The skipper, Peter, and the other four crewmen were all lost.

We will never know exactly why the *Western Sea* sank, but facts concerning the condition of the vessel began to appear from fellow fishermen who knew the boat, from those who had serviced the vessel; and from a former member of the crew—the man whom Peter had replaced. From them we learned that there was rotten planking, painted to appear safe, that at least one hatch cover was loose; that it had a hand-operated bilge-pump which was in use every three hours around the clock; and

that it had a heavy diesel-powered skiff lashed above decks, contributing to its instability. The vessel had no liferaft, no survival suits, and no EPIRB (emergency position indicator radio beacon). The final—and most wrenching—information came from the Coast Guard's report, which concluded that the captain's body, when it was recovered several weeks later, still had traces of cocaine in it.

It became clearer and clearer to us that, while death at sea has always been a threat to fishermen, something was wrong. Our son was *not* a victim of the sea; he was a victim of negligence. He was the victim of an unsafe workplace—a workplace made unsafe by the individuals involved; permitted by an industry unwilling to interfere; and accepted by a government which demands adherence to regulations in every other industry I can think of—but not in commercial fishing, the most dangerous industry in the country—seven times as dangerous as industry as a whole, and twice as dangerous as mining, the second most lethal.

In three years of hearings on fishing vessel safety and insurance there has been a great deal of testimony, much of it repetitious, from lobbyists and industry groups. What is missing is the testimony of the men on the boats; the crewmen, not the owners, who risk their lives and health with every voyage. We have learned that frank testimony of this sort is hard to come by because the crewman who calls for new mandatory safety requirements is likely to be, at best, unpopular in the industry, and at worst, unemployable.

We have been contacted by a number of professional fishermen who want to tell their story but fear being blackballed if they do so. One such person who talked to us a few months ago described the unbelievably dangerous condition of a large fish processor he was hired to skipper on the West Coast. Nearly a half century old, it had no automatic bilge pumps or high water alarms to warn when the constant leaks became critical. None of their navigational equipment, neither gyro or magnetic compass nor either of the two Loran position finders worked properly. There were no updated charts on board. One of the anchor winches was frozen and inoperable and the other anchor chain was nearly rusted through. Fuel to be transferred to fishing boats was unsafely and illegally stored. And here was a large vessel which was supposed to sail through open and stormy waters with a large crew of what amounts to cannery workers, then to anchor off the Aleutians and service a fleet of fishing boats. When the skipper refused to take the boat out without further repairs, he was fired. When we asked him to describe his experiences publicly, he regretfully declined because, he said, he would never get another job in the industry. So I urge you to be a little skeptical when you are told by representatives of fishing boat owners that they represent "the crewman on the boat."

I'd like to tell you about one such man: Just before Thanksgiving, we received a phone call from Don and Maxine Klingenberg in Tacoma, Washington. It was the first of many talks we've had. We may never meet the Klingenbergs, but they feel as close as family. On Nov. 5th—just a month ago—the fishing vessel *Uyak II* sank off Kodiak, Alaska, with their son Greg and five others aboard. There were two survivors. The Klingenbergs went to Kodiak and spoke with the two survivors, the Coast Guardsman in Kodiak, and the NTSB investigator. I'd like to quote from their letter.

"The *Uyak II* . . . in a calm sea, went from an upright to an upside-down position in less than one minute.

"The ultimate factor which caused the accident was a flooded lazerette . . . it was flooding with water and being pumped several times a day . . . the warning system had been disconnected . . . the engineer, who perished in the sinking, had requested a new alarm system (from the owners) and been refused . . .

"Structural changes were made to the vessel without a stability test . . . including changes in the position of the trawl winches and the gantry . . . and the out-riggers had been cut off.

"The twin engine vessel had one engine out . . .

"The escape hatch in the crew's quarters (where Greg kept the survival suit which he had bought for the trip) was covered in plastic and dog-wedged in, making it impossible to open by hand.

"The fish hold covers could not be bolted down to be water tight. When the survivors pulled a rope on the life raft in an attempt to upright it, the rope tore the liferaft and it was thus inoperable."

Do you think there is anyone who could look the Klingenbergs in the face and tell them that their son was a "victim of the sea?"

But let's return to this part of the world—and an even more recent disaster: On Nov. 15th, the Coast Guard began searching for the fishing vessel *Reliance*, a 65-foot obster boat, which was due on or about the 16th, and which hadn't been heard from since the 10th. The captain, Christopher Dennis, was a R. I. man, so were most of the crew of four. All that has been found was an empty liferaft with survival suits in it. What happened? Did it have an EPIRB aboard, which would have automatically transmitted a distress signal? Ten long years ago, Mary Finch Hoyt of Washington, DC lost her son, Steve, off the shores of R.I. when his fishing vessel, the *Lobsta I* sank with the loss of all aboard. The *Lobsta I* had all kinds of safety and survival equipment aboard, but no EPIRB. The best guess concerning the fate of the boat was that she was rammed by a vessel which had no intention of reporting it immediately. An EPIRB would have transmitted a signal instantly. Thanks to a bill last year, EPIRB's are now required equipment, though the regulation has yet to be implemented.

Another local case concerns the *Andrew and Allison,* the fishing vessel out of Point Judith which was lost last January. There is pretty good evidence to suggest that if the liferaft had been in proper working condition and if the crew had had the most rudimentary training in survival techniques, that more than the one survivor of that disaster would be alive today.

Another heart-breaking R.I. case was the loss of Vinnie Hetherman, from the deck of the *Joyce Judith,* in January of 1981. As you will hear from Janice DeFrances, his fiancee at that time, he actually died within sight of his shipmates—and they didn't know what to do. How can this happen, again and again?

We firmly support S. 849, introduced by Sen. Chafee and co-sponsored by Sens. Kerry and Adams. We support it because it contains those minimal improvements in safety which could save so many lives at so little cost. Common sense tells us that fishing boats should not be allowed to operate without life rafts, emergency radio equipment, survival suits, emergency locator beacons and other survival equipment which would give the crew of a sinking vessel at least a chance to live.

But we believe that Congress should do more for safety than S. 849 calls for. The House version of the same bill has been amended to mandate the first steps towards licensing of operators and inspection of processing vessels. From the beginning we have called for immediate licensing of operators, as was accomplished with the tow boat industry in the late 1970s. We believe that owners ought to be required to train crews in the use of on-board safety equipment and conduct emergency drills. And we believe that vessels ought to be inspected, either by the Coast Guard or by private underwriters or surveyors, with particular attention to stability. The National Transportation Safety Board's recommendations go considerably further in this direction, and we believe that their objective, unbiased advice should weigh heavily in Congressional deliberations.

One of the encouraging developments of the last year is that no one argues against new safety regulations—neither the Coast Guard nor the Trial Lawyers nor the vessel owners nor the consumer groups. What is controversial is the issue of compensation for injured seamen, which caused the defeat of a safety and insurance bill in the last Congress. At present there is a negotiation in progress between the Trial Lawyers and the House staff, with the aim of producing a compromise by spring. We hope that a compromise can be forged, but it may well be that the issue of compensation and limits on liability will never be resolved to the satisfaction of the lawyers on the one hand and the boat owners on the other. If no solution is in sight by spring, we—the Barrys, the Klingenbergs, the Hofers, Bob Darling, Pete Zimny, Mary Hoyt, Janice deFrances, the growing list of the bereaved—urge you to move ahead to stop the needless toll of deaths in this nation's most dangerous industry. We beg you to seriously consider dropping the compensation portion of the bill (Title I) and to go forward with the safety portion of the bill (Title II) on its own merits.

In conclusion, I'd like to read a paragraph from a letter we received from Don Klingenberg earlier this week:

"We know there is no way we can bring our only son back to life again, but we also know we must *do* something so that the lives of other fishermen will not be so needlessly lost. We know accidents can occur, but we overwhelmingly believe this accident would never have occurred if even basic safety measures on board had been met by those responsible for this vessel.

"We are thus joining you, insisting (on getting) from our legislators, laws which will govern the safety of commercial fishing vessels. There must be licensing of vessels, owners, and skippers. It must become unlawful for a boat to have structural changes without a certificate of stability. Every boat must be periodically, stringently checked to ensure basic safety measures such as life preservers (survival suits in

Alaskan waters); operable life rafts; adequate, working alarm systems; and properly functioning machinery and equipment."

Each of the names I have cited represents a shattered family. How many more names will there be next year, because action wasn't taken in time?

Thank you.

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